

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 283**

6 (By Senators Laird, Miller, Stollings, Unger, Jenkins, Foster,
7 Plymale, Klempa, Yost and Kessler (Acting President))

8 _____
9 [Originating in the Committee on the Judiciary;
10 reported February 24, 2011.]

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13
14 A BILL to amend the Code of West Virginia, 1931, as amended, by
15 adding thereto a new article, designated §61-12A-1, §61-12A-2,
16 §61-12A-3 and §61-12A-4, all relating to the creation of the
17 Unintentional Pharmaceutical Drug Overdose Fatality Review
18 Team under the Office of the Chief Medical Examiner; setting
19 forth membership of the team; setting forth responsibilities
20 of the team; providing for certain actions the team may not
21 take in exercising its duties; providing for an annual report
22 to the Governor and Legislature and its contents; providing
23 for confidentiality of the team's proceedings, records and
24 opinions; setting forth record-keeping requirements; requiring
25 other state agencies, hospitals and other health agencies to
26 cooperate with the team; and granting rule-making authority.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §61-12A-1, §61-12A-2,
4 §61-12A-3 and §61-12A-4, all to read as follows:

5 **ARTICLE 12A. UNINTENTIONAL PHARMACEUTICAL DRUG OVERDOSE FATALITY**

6 **REVIEW TEAM.**

7 **§61-12A-1. Legislative findings.**

8 The Legislature finds:

9 (1) That pharmaceutical drug abuse and addiction has become an
10 increasingly serious public health and law enforcement problem
11 throughout the State of West Virginia, affecting the quality of
12 life in the communities in which we live;

13 (2) That the increased and growing number of unintentional
14 overdose deaths associated with the nonmedical use and diversion of
15 pharmaceutical drugs, primarily opioid analgesics, is unacceptable
16 and requires further public policy consideration and action;

17 (3) That problems related to pharmaceutical drug abuse and
18 addiction, the nonmedical use and diversion of pharmaceutical
19 drugs, and unintentional pharmaceutical drug overdose deaths are
20 complex problems requiring multidisciplinary review, study and
21 planning to assist in the identification and further development of
22 public policies intended to address these problems in the future.

23 **§61-12A-2. Unintentional Pharmaceutical Drug Overdose Fatality**

24 **Review Team.**

25 (a) The Unintentional Pharmaceutical Drug Overdose Fatality

1 Review Team is hereby created under the office of the chief medical
2 examiner. The Unintentional Pharmaceutical Drug Overdose Fatality
3 Review Team is a multidisciplinary team created to examine, review
4 and analyze the deaths of all persons in the State of West Virginia
5 who die as a result of unintentional prescription or pharmaceutical
6 drug overdoses.

7 (b) The Unintentional Pharmaceutical Drug Overdose Fatality
8 Review Team shall consist of the following members appointed by the
9 Governor:

10 (1) The Chief Medical Examiner in the Bureau for Public
11 Health, who is to serve as the chairperson and who is responsible
12 for calling and coordinating all meetings;

13 (2) The Director of the West Virginia State Board of Pharmacy
14 or his or her designee;

15 (3) The Commissioner of the Bureau for Public Health or his or
16 her designee;

17 (4) The Director of the Division of Vital Statistics or his or
18 her designee;

19 (5) The Superintendent of the West Virginia State Police or
20 his or her designee;

21 (6) One representative who is a physician nominated by the
22 West Virginia State Medical Association;

23 (7) One representative who is a registered nurse nominated by
24 the West Virginia Nurses Association;

25 (8) One representative who is a doctor of osteopathy nominated
26 by the West Virginia Society of Osteopathic Medicine;

1 (9) One representative who is a physician specializing in
2 addiction medicine nominated by the West Virginia Society of
3 Addiction Medicine;

4 (10) One representative who is a Doctor of Pharmacy, with a
5 background in prescription drug abuse and diversion nominated by
6 West Virginia Pharmacists Association;

7 (11) One representative who is a licensed counselor nominated
8 by the West Virginia Association of Alcoholism and Drug Abuse
9 Counselors;

10 (12) One representative of the United States Drug Enforcement
11 Administration;

12 (13) One licensed physician or doctor of osteopathy who
13 practices pain management as a principal part of his or her
14 practice;

15 (14) A person who shall be considered an expert in bio-ethics
16 training;

17 (15) One representative who is a licensed dentist nominated by
18 the Board of Dental Examiners; and

19 (16) Any additional persons that the chairperson of the team
20 determines is needed in the review and consideration of a
21 particular case.

22 (c) Each member of the Unintentional Pharmaceutical Drug
23 Overdose Fatality Review Team shall serve for a term of three
24 years, unless otherwise reappointed to a second or subsequent term.
25 Members shall continue to serve until their respective terms expire
26 or until their successors have been appointed.

1 (d) Each appointment of a physician, whether for a full term
2 or to fill a vacancy, is to be made by the Governor from among
3 three nominees selected by the West Virginia State Medical
4 Association. Each appointment of a registered nurse, whether for
5 a full term or to fill a vacancy, is to be made by the Governor
6 from among three nominees selected by the West Virginia Nurses
7 Association. Each appointment of a doctor of osteopathy, whether
8 for a full term or to fill a vacancy, is to be made by the Governor
9 from among three nominees selected by the West Virginia Society of
10 Osteopathic Medicine. Each appointment of a dentist, whether for
11 a full term or to fill a vacancy, is to be made by the Governor
12 from among three nominees selected by the West Virginia Dental
13 Association. With respect to all other appointments not specified
14 herein, the Governor may make the appointments without nomination.

15 (e) Each member of the Unintentional Pharmaceutical Drug
16 Overdose Fatality Review Team shall serve without additional
17 compensation and may not be reimbursed for any expenses incurred in
18 the discharge of his or her duties under the provisions of this
19 article.

20 **§61-12A-3. Responsibilities of the Unintentional Pharmaceutical**
21 **Drug Overdose Fatality Review Team.**

22 (a) The Office of the Chief Medical Examiner, in consultation
23 with the Unintentional Pharmaceutical Drug Overdose Fatality Review
24 Team shall promulgate legislative rules pursuant to article three,
25 chapter twenty-nine-a of this code. Those rules shall include, at
26 a minimum:

1 (1) The standard procedures for the conduct of the
2 Unintentional Pharmaceutical Drug Overdose Fatality Review Team;
3 and

4 (2) The processes and protocols for the review and analysis of
5 unintentional pharmaceutical drug overdoses resulting in fatalities
6 of those who were not suffering from mortal diseases shortly before
7 death.

8 (b) The Unintentional Pharmaceutical Drug Overdose Fatality
9 Review Team shall:

10 (1) Review and analyze all deaths occurring within the State
11 of West Virginia where the cause of death was determined to be due
12 to unintentional pharmaceutical drug overdose, specifically
13 excluding the death of persons suffering from a mortal disease or
14 instances where the manner of the overdose death was suicide;

15 (2) Ascertain and document the trends, patterns and risk
16 factors related to unintentional pharmaceutical drug overdose
17 fatalities occurring within the State of West Virginia;

18 (3) Ascertain and document patterns related to the sale and
19 distribution of pharmaceutical prescriptions by those otherwise
20 licensed to provide said prescriptions, including the application
21 of information included within the database kept and maintained by
22 the West Virginia Board of Pharmacy;

23 (4) Develop and implement standards for the uniform and
24 consistent reporting of unintentional pharmaceutical drug overdose
25 deaths by law enforcement or other emergency service responders;

26 (5) Provide statistical information and analysis regarding the

1 causes of unintentional pharmaceutical drug overdose fatalities;
2 and

3 (6) Promote public awareness of the incidence and causes of
4 unintentional pharmaceutical drug overdose fatalities, including
5 recommendations for their reduction.

6 (c) The Unintentional Pharmaceutical Drug Overdose Fatality
7 Review Team shall submit an annual report to the Governor and to
8 the Legislative Oversight Commission on Health and Human Resources
9 Accountability concerning its activities within the state. The
10 report is due annually on December 1. The report is to include
11 statistical information concerning cases reviewed during the year,
12 trends and patterns concerning these cases, and the team's
13 recommendations to reduce the number of unintentional
14 pharmaceutical drug overdose fatalities in the state.

15 (d) The Unintentional Pharmaceutical Drug Overdose Fatality
16 Review Team, in the exercise of its duties as defined in this
17 section, may not:

18 (1) Call witnesses or take testimony from individuals involved
19 in the investigation of a pharmaceutical drug overdose fatality;

20 (2) Contact a family member of the deceased;

21 (3) Enforce any public health standard or criminal law or
22 otherwise participate in any legal proceeding; or

23 (4) Otherwise take any action which in the determination of a
24 prosecuting attorney or his or her assistants, impairs the ability
25 of the prosecuting attorney, his or her assistants or any law-
26 enforcement officer to perform his or her statutory duties.

1 (e) Proceedings, records and opinions of the Unintentional
2 Pharmaceutical Drug Overdose Fatality Review Team are confidential
3 and are not subject to discovery, subpoena or introduction into
4 evidence in any civil or criminal proceeding. Nothing in this
5 subsection is to be construed to limit or restrict the right to
6 discover or use in any civil or criminal proceeding anything that
7 is available from another source and entirely independent of the
8 proceedings of the Unintentional Pharmaceutical Drug Overdose
9 Fatality Review Team.

10 (f) Members of the Unintentional Pharmaceutical Drug Overdose
11 Fatality Review Team may not be questioned in any civil or criminal
12 proceeding regarding information presented in or opinions formed as
13 a result of a meeting of the team. This subsection may not be
14 construed to prevent a member of the Unintentional Pharmaceutical
15 Drug Overdose Fatality Review Team from testifying to information
16 obtained independently of the team or which is public information.

17 **§61-12A-4. Other agencies of government required to cooperate.**

18 State, county and local agencies, hospitals and other health
19 agencies shall provide the Unintentional Pharmaceutical Drug
20 Overdose Fatality Review Team with any information requested in
21 writing by the team as allowable by law and upon receipt of a
22 certified copy of the circuit court's order directing said agencies
23 to release information in its possession relating to the deceased.
24 The team shall assure that all information received and developed
25 in connection with this article remain confidential.