

1 **Senate Bill No. 108**

2 (By Senators Laird, Stollings, Jenkins, Plymale and Miller)

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4 [Introduced February 13, 2013; referred to the Committee on  
5 Health and Human Resources; and then to the Committee on  
6 Government Organization.]  
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11 A BILL to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new article, designated §61-12A-1, §61-12A-2,  
13 §61-12A-3, §61-12A-4, §61-12A-5 and §61-12A-6, all relating to  
14 the creation of the Unintentional Pharmaceutical Drug Overdose  
15 Fatality Review Team under the Office of the Chief Medical  
16 Examiner; setting forth legislative findings; setting forth  
17 membership of the team and terms of office; setting forth  
18 responsibilities of the team; providing for certain actions  
19 the team may not take in exercising its duties; providing for  
20 an annual report to the Governor and Legislature and its  
21 contents; providing for confidentiality of the team's  
22 proceedings, records and opinions; setting forth record-  
23 keeping requirements; authorizing access to certain records;

1 requiring other state and local agencies to cooperate with the  
2 team; and directing the Office of the Chief Medical Examiner,  
3 in consultation with the Unintentional Pharmaceutical Drug  
4 Overdose Fatality Review Team, to propose legislative rules.

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

6 That the Code of West Virginia, 1931, as amended, be amended  
7 by adding thereto a new article, designated §61-12A-1, §61-12A-2,  
8 §61-12A-3, §61-12A-4, §61-12A-5 and §61-12A-6, all to read as  
9 follows:

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

11 **REVIEW TEAM.**

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

13 The Legislature finds:

14 (1) That pharmaceutical drug abuse and addiction has become an  
15 increasingly serious public health and law-enforcement problem  
16 throughout the State of West Virginia, affecting the quality of  
17 life in the communities in which we live;

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

22 (3) That problems related to pharmaceutical drug abuse and  
23 addiction, the nonmedical use and diversion of pharmaceutical drugs

1 and unintentional pharmaceutical drug overdose deaths are complex  
2 problems requiring multidisciplinary review, study and planning to  
3 assist in the identification and further development of public  
4 policies intended to address these problems in the future.

5 **§61-12A-2. Unintentional Pharmaceutical Drug Overdose Fatality**  
6 **Review Team.**

7 (a) The Unintentional Pharmaceutical Drug Overdose Fatality  
8 Review Team is hereby created under the Office of the Chief Medical  
9 Examiner. The Unintentional Pharmaceutical Drug Overdose Fatality  
10 Review Team is a multidisciplinary team created to examine, review  
11 and analyze the deaths of all persons in the State of West Virginia  
12 who die as a result of unintentional prescription or pharmaceutical  
13 drug overdoses.

14 (b) The Unintentional Pharmaceutical Drug Overdose Fatality  
15 Review Team shall consist of the following members appointed by the  
16 Governor:

17 (1) The Chief Medical Examiner in the Bureau for Public Health  
18 or his or her designee, who is to serve as the chairperson and who  
19 is responsible for calling and coordinating all meetings;

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

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

1           (4) The Director of the Division of Vital Statistics or his or  
2 her designee;

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

5           (6) One representative who is a physician nominated by the  
6 West Virginia State Medical Association. Each appointment of a  
7 physician, whether for a full term or to fill a vacancy, is to be  
8 made by the Governor from among three nominees selected by the West  
9 Virginia State Medical Association;

10          (7) One representative who is a registered nurse nominated by  
11 the West Virginia Nurses Association. Each appointment of a  
12 registered nurse, whether for a full term or to fill a vacancy, is  
13 to be made by the Governor from among three nominees selected by  
14 the West Virginia Nurses Association;

15          (8) One representative who is a doctor of osteopathy nominated  
16 by the West Virginia Society of Osteopathic Medicine. Each  
17 appointment of a doctor of osteopathy, whether for a full term or  
18 to fill a vacancy, is to be made by the Governor from among three  
19 nominees selected by the West Virginia Society of Osteopathic  
20 Medicine;

21          (9) One licensed physician or doctor of osteopathy who  
22 practices pain management as a principal part of his or her  
23 practice;

1           (10) One representative who is a doctor of pharmacy, with a  
2 background in prescription drug abuse and diversion, nominated by  
3 the West Virginia Pharmacists Association;

4           (11) One representative who is a licensed counselor nominated  
5 by the West Virginia Association of Alcoholism and Drug Abuse  
6 Counselors;

7           (12) One representative of the United States Drug Enforcement  
8 Administration;

9           (13) One representative who is a prosecuting attorney  
10 nominated by the West Virginia Prosecuting Attorneys Institute;

11           (14) A person who is considered an expert in bio-ethics  
12 training;

13           (15) One representative who is a licensed dentist nominated by  
14 the Board of Dental Examiners. Each appointment of a dentist,  
15 whether for a full term or to fill a vacancy, is to be made by the  
16 Governor from among three nominees selected by the West Virginia  
17 Dental Association; and

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

21           (c) The Governor may make appointments without nomination for  
22 all representatives identified in subsection (b) of this section  
23 where a list of nominees is not required.

1 (d) Each member of the Unintentional Pharmaceutical Drug  
2 Overdose Fatality Review Team shall serve for a term of three  
3 years, unless otherwise reappointed to a second or subsequent term.  
4 Members shall continue to serve until their respective terms expire  
5 or until their successors have been appointed.

6 (e) Each member of the Unintentional Pharmaceutical Drug  
7 Overdose Fatality Review Team shall serve without additional  
8 compensation and may not be reimbursed for any expenses incurred in  
9 the discharge of his or her duties under the provisions of this  
10 article.

11 **§61-12A-3. Responsibilities of the Unintentional Pharmaceutical**  
12 **Drug Overdose Fatality Review Team.**

13 (a) The Unintentional Pharmaceutical Drug Overdose Fatality  
14 Review Team shall:

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

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

23 (3) Ascertain and document patterns related to the sale and

1 distribution of pharmaceutical prescriptions by those otherwise  
2 licensed to provide said prescriptions, including the application  
3 of information included within the Controlled Substances Monitoring  
4 Program database kept and maintained by the West Virginia Board of  
5 Pharmacy;

6 (4) Develop and implement standards for the uniform and  
7 consistent reporting of unintentional pharmaceutical drug overdose  
8 deaths by law-enforcement or other emergency-service responders;  
9 and

10 (5) Provide statistical information and analysis regarding the  
11 causes of unintentional pharmaceutical drug overdose fatalities.

12 (b) The Unintentional Pharmaceutical Drug Overdose Fatality  
13 Review Team, in the exercise of its duties as defined in this  
14 section, may not:

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

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

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

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

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

10 **§61-12A-4. Access to information; other agencies of government**  
11 **required to cooperate.**

12 (a) Notwithstanding any other provision of this code to the  
13 contrary, the Unintentional Pharmaceutical Drug Overdose Fatality  
14 Review Team may request information and records as necessary to  
15 carry out its responsibilities. Records and information that may  
16 be requested under this section include:

17 (1) Medical, dental and mental health records;

18 (2) Substance abuse records to the extent allowed by federal  
19 law; and

20 (3) Information and records maintained by any state, county  
21 and local government agency, except as provided in subdivision (4),  
22 subsection (b), section three of this article.

23 (b) State, county and local government agencies shall provide



1 the Unintentional Pharmaceutical Drug Overdose Fatality Review Team  
2 with any information requested in writing by the team.

3 **§61-12A-5. Confidentiality.**

4 (a) Proceedings, records and opinions of the Unintentional  
5 Pharmaceutical Drug Overdose Fatality Review Team are confidential  
6 and are not subject to discovery, subpoena or introduction into  
7 evidence in any civil or criminal proceeding. This section does  
8 not limit or restrict the right to discover or use in any civil or  
9 criminal proceeding anything that is available from another source  
10 and entirely independent of the proceedings of the Unintentional  
11 Pharmaceutical Drug Overdose Fatality Review Team.

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

19 (c) Proceedings, records and opinions of the Unintentional  
20 Pharmaceutical Drug Overdose Fatality Review Team are exempt from  
21 disclosure under the Freedom of Information Act, article one,  
22 chapter twenty-nine-b of this code.

23 **§61-12A-6. Rules.**

1           The Office of the Chief Medical Examiner, in consultation with  
2 the Unintentional Pharmaceutical Drug Overdose Fatality Review  
3 Team, shall propose rules for legislative approval in accordance  
4 with article three, chapter twenty-nine-a of this code. Those  
5 rules shall include, at a minimum:

6           (1) The standard procedures for the conduct of the  
7 Unintentional Pharmaceutical Drug Overdose Fatality Review Team;

8           (2) The processes and protocols for the review and analysis of  
9 unintentional pharmaceutical drug overdoses resulting in fatalities  
10 of those who were not suffering from mortal diseases shortly before  
11 death;

12           (3) The processes and protocols to ensure confidentiality of  
13 records obtained by the Unintentional Pharmaceutical Drug Overdose  
14 Fatality Review Team; and

15           (4) Such other rules as may be deemed necessary to effectuate  
16 the purposes of this article.

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NOTE: The purpose of this bill is to create the Unintentional Pharmaceutical Drug Overdose Fatality Review Team under the Office of the Chief Medical Examiner. The bill sets forth legislative findings. The bill sets forth membership of the team and terms of office. The bill sets forth responsibilities of the team. The bill provides for certain actions the team may not take in exercising its duties. The bill provides for an annual report to the Governor and Legislature and its contents. The bill provides for confidentiality of the team's proceedings, records and opinions.

The bill sets forth record-keeping requirements. The bill authorizes access to certain records. The bill requires other state and local agencies to cooperate with the team. The bill grants rule-making authority.

This article is new; therefore, strike-throughs and underscoring have been omitted.

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GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill No. 108**--A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3, §61-12A-4, §61-12A-5 and §61-12A-6, all relating to the creation of the Unintentional Pharmaceutical Drug Overdose Fatality Review Team under the Office of the Chief Medical Examiner; setting forth legislative findings; setting forth membership of the team and terms of office; setting forth responsibilities of the team; providing for certain actions the team may not take in exercising its duties; providing for an annual report to the Governor and Legislature and its contents; providing for confidentiality of the team's proceedings, records and opinions; setting forth record-keeping requirements; authorizing access to certain records; requiring other state and local agencies to cooperate with the team; and directing the Office of the Chief Medical Examiner, in consultation with the Unintentional Pharmaceutical Drug Overdose Fatality Review Team, to propose legislative rules.