

SB108 CC #1 4-13

90 days

Roskovensky 3338

Delegate Perdue, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. Senate Bill No. 108, Creating Unintentional Pharmaceutical Drug Overdose Fatality Review Team.**

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Senate Bill No. 108 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the House, striking out everything after the enacting clause, and agree to the same as follows:

That §48-25A-1, §48-25A-2, and §48-25A-3 of the Code of West Virginia, 1931, as amended, be repealed; that §48-27A-1, §48-27A-2, and §48-27A-3 of said code be repealed; that §49-5D-5 of said code be repealed; that said code be amended by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4, all to read as follows:

**ARTICLE 12A. FATALITY AND MORTALITY REVIEW TEAM.**

**§61-12A-1. Fatality and Mortality Review Team.**

(a) The Fatality and Mortality Review Team is created under the Bureau for Public Health. The Fatality and Mortality Review Team is a multidisciplinary team created to oversee and coordinate the examination, review and assessment of:

(1) The deaths of all persons in West Virginia who die as a result of unintentional prescription or pharmaceutical drug overdoses;

(2) The deaths of children under the age of eighteen years;

(3) The deaths resulting from suspected domestic violence; and

(4) The deaths of all infants and all women who die during pregnancy, at the time of birth or within one year of the birth of a child.

(b) The Fatality and Mortality Review Team shall consist of the following members:

(1) The Chief Medical Examiner in the Bureau for Public Health or his or her designee, who is to serve as the chairperson and who is responsible for calling and coordinating meetings of the Fatality and Mortality Review Team and meetings of any advisory panel created by the Fatality and Mortality Review Team;

(2) The Commissioner of the Bureau for Public Health or his or her designee;

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

(4) A prosecuting attorney, as appointed by the Governor, who shall serve for a term of three years unless otherwise reappointed

to a second or subsequent term. A prosecuting attorney appointed to the team shall continue to serve until his or her term expires or until his or her successor has been appointed.

(c) Each member shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

**§61-12A-2. Responsibilities of the Fatality and Mortality Review Team and Advisory Panels.**

(a) The Fatality and Mortality Review Team shall establish the following advisory panels to carry out the purposes of this article including:

(1) An unintentional pharmaceutical drug overdose fatality review panel to examine, analyze and review deaths resulting from unintentional prescription or pharmaceutical drug overdose;

(2) A child fatality review panel to examine, analyze and review deaths of children under the age of eighteen years;

(3) A domestic violence fatality review panel to examine, analyze and review deaths resulting from suspected domestic violence;

(4) An infant and maternal mortality review panel to examine, analyze and review the deaths of infants and women who die during pregnancy, at the time of birth or within one year of the birth of a child.

(b) The members of the Fatality and Mortality Review Team

shall serve as members of each of the advisory panels established pursuant to this article.

(c) The Commissioner of the Bureau of Public Health, in consultation with the Fatality and Mortality Review Team, shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, that the advisory panels shall follow. Those rules shall include, at a minimum:

(1) The representatives that shall be included on each advisory panel;

(2) The responsibilities of each of the advisory panels, including but not limited to, each advisory panel's responsibility to:

(A) Review and analyze all deaths as required by this article;

(B) Ascertain and document the trends, patterns and risk factors; and

(C) Provide statistical information and analysis regarding the causes of certain fatalities; and

(3) The standard procedures for the conduct of the advisory panels;

(4) The processes and protocols for the review and analysis of fatalities and mortalities of those who were not suffering from mortal diseases shortly before death;

(5) The processes and protocols to ensure confidentiality of records obtained by the advisory panel;

(6) That the advisory panels must submit a report to the

Fatality and Mortality Review Team annually, the date the annual report must be submitted and the contents of the annual report;

(7) That the advisory panel may include any additional persons with expertise or knowledge in a particular field that it determines are needed in the review and consideration of a particular case as a result of a death in subsection (a) of section one;

(8) That the advisory panel may provide training for state agencies and local multidisciplinary teams on the matters examined, reviewed and analyzed by the advisory panel;

(9) The advisory panel's responsibility to promote public awareness on the matters examined, reviewed and analyzed by the advisory panel;

(10) Actions the advisory panel may not take or engage in including:

(A) Call witnesses or take testimony from individuals involved in the investigation of a fatality;

(B) Contact a family member of the deceased;

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

(D) Otherwise take any action which, in the determination of a prosecuting attorney or his or her assistants, impairs the ability of the prosecuting attorney, his or her assistants or any law-enforcement officer to perform his or her statutory duties; and

(11) Other rules as may be deemed necessary to effectuate the

purposes of this article.

(d) The Fatality and Mortality Review Team shall submit an annual report to the Governor and to the Legislative Oversight Commission on Health and Human Resources Accountability concerning its activities within the state and the activities of the advisory panels. The report is due annually on December 1. The report is to include statistical information concerning cases reviewed during the year, trends and patterns concerning these cases and the team's recommendations to reduce the number of fatalities and mortalities that occur in the state.

**§61-12A-3. Access to information; other agencies of government required to cooperate.**

(a) Notwithstanding any other provision of this code to the contrary, the Fatality and Mortality Review Team and the advisory panels established by the team pursuant to this article may request information and records as necessary to carry out its responsibilities. Records and information that may be requested under this section include:

(1) Medical, dental and mental health records;

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

(3) Information and records maintained by any state, county and local government agency, except as provided in subsection (c), section two of this article.

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

the Fatality and Mortality Review Team and the advisory panels established by the team with any information requested in writing by the team or by an advisory panel.

**§61-12A-4. Confidentiality.**

(a) Proceedings, records and opinions of the Fatality and Mortality Review Team and the advisory panels established by the team pursuant to this article are confidential and are not subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. This section does not limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another credible source and entirely independent of the proceedings of the team or advisory panels.

(b) Members of the Fatality and Mortality Review Team and members of the advisory panels established by the team may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. This subsection does not prevent a member of the team or an advisory panel from testifying to information obtained independently of the team or advisory panel which is public information.

(c) Proceedings, records and opinions of the Fatality and Mortality Review Team and the advisory panels established by the team are exempt from disclosure under the Freedom of Information Act, as provided in chapter twenty-nine-b of this code.;

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

**Eng. Senate Bill No. 108**--A BILL to repeal §48-25A-1, §48-25A-2, and §48-25A-3 of the Code of West Virginia, 1931, as amended; to repeal §48-27A-1, §48-27A-2, and §48-27A-3 of said code; to repeal §49-5D-5 of said code; and to amend said code by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4; all relating to creating a fatality and mortality review team; setting forth membership of the team; setting forth terms of office; providing that members of the team are not to be compensated or reimbursed expenses; setting forth responsibilities of the team; requiring team to establish certain advisory panels; providing that team members will also serve as advisory panel members; requiring the Commissioner of the Bureau of Public Health, in consultation with the team, to promulgate legislative rules; providing for certain actions the team and advisory panels may not take in exercising their duties; requiring an annual report; providing confidentiality; setting forth record-keeping requirements; authorizing access to certain records; requiring certain agencies to cooperate with the team and advisory panels.

Respectfully submitted,

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Evan Jenkins,  
*Chair,*

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Don Perdue,  
*Chair,*

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Art Kirkendoll

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David Perry

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Dave Sypolt  
*Conferees on the part  
of the Senate.*

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Joe Ellington  
*Conferees on the part of  
the House of Delegates.*