

Senate Bill No. 108

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

[Introduced February 13, 2013;
referred to the Committee on Health and Human Resources;
and then to the Committee on Government Organization.]

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 granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be 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 to read as follows:

**ARTICLE 12A. UNINTENTIONAL PHARMACEUTICAL
DRUG OVERDOSE FATALITY
REVIEW TEAM.**

§61-12A-1. Legislative findings.

1 The Legislature finds:

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

7 (2) That the increased and growing number of
8 unintentional overdose deaths associated with the nonmedical
9 use and diversion of pharmaceutical drugs, primarily opioid
10 analgesics, is unacceptable and requires further public policy
11 consideration and action; and

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

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

1 (a) The Unintentional Pharmaceutical Drug Overdose
2 Fatality Review Team is hereby created under the Office of
3 the Chief Medical Examiner. The Unintentional
4 Pharmaceutical Drug Overdose Fatality Review Team is a

5 multidisciplinary team created to examine, review and
6 analyze the deaths of all persons in the State of West Virginia
7 who die as a result of unintentional prescription or
8 pharmaceutical drug overdoses.

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

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

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

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

20 (4) The Director of the Division of Vital Statistics or his
21 or her designee;

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

24 (6) One representative who is a physician nominated by
25 the West Virginia State Medical Association. Each
26 appointment of a physician, whether for a full term or to fill
27 a vacancy, is to be made by the Governor from among three
28 nominees selected by the West Virginia State Medical
29 Association;

30 (7) One representative who is a registered nurse
31 nominated by the West Virginia Nurses Association. Each
32 appointment of a registered nurse, whether for a full term or
33 to fill a vacancy, is to be made by the Governor from among
34 three nominees selected by the West Virginia Nurses
35 Association;

36 (8) One representative who is a doctor of osteopathy
37 nominated by the West Virginia Society of Osteopathic
38 Medicine. Each appointment of a doctor of osteopathy,
39 whether for a full term or to fill a vacancy, is to be made by

40 the Governor from among three nominees selected by the
41 West Virginia Society of Osteopathic Medicine;

42 (9) One licensed physician or doctor of osteopathy who
43 practices pain management as a principal part of his or her
44 practice;

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

48 (11) One representative who is a licensed counselor
49 nominated by the West Virginia Association of Alcoholism
50 and Drug Abuse Counselors;

51 (12) One representative of the United States Drug
52 Enforcement Administration;

53 (13) One representative who is a prosecuting attorney
54 nominated by the West Virginia Prosecuting Attorneys
55 Institute;

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

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

64 (16) Any additional persons that the chairperson of the
65 team determines is needed in the review and consideration of
66 a particular case.

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

70 (d) Each member of the Unintentional Pharmaceutical
71 Drug Overdose Fatality Review Team shall serve for a term
72 of three years, unless otherwise reappointed to a second or
73 subsequent term. Members shall continue to serve until their
74 respective terms expire or until their successors have been
75 appointed.

76 (e) Each member of the Unintentional Pharmaceutical
77 Drug Overdose Fatality Review Team shall serve without
78 additional compensation and may not be reimbursed for any
79 expenses incurred in the discharge of his or her duties under
80 the provisions of this article.

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

- 1 (a) The Unintentional Pharmaceutical Drug Overdose
2 Fatality Review Team shall:
- 3 (1) Review and analyze all deaths occurring within the
4 State of West Virginia where the cause of death was
5 determined to be due to unintentional pharmaceutical drug
6 overdose, specifically excluding the death of persons
7 suffering from a mortal disease or instances where the
8 manner of the overdose death was suicide;
- 9 (2) Ascertain and document the trends, patterns and risk
10 factors related to unintentional pharmaceutical drug overdose
11 fatalities occurring within the State of West Virginia;

12 (3) Ascertain and document patterns related to the sale
13 and distribution of pharmaceutical prescriptions by those
14 otherwise licensed to provide said prescriptions, including
15 the application of information included within the Controlled
16 Substances Monitoring Program database kept and
17 maintained by the West Virginia Board of Pharmacy;

18 (4) Develop and implement standards for the uniform and
19 consistent reporting of unintentional pharmaceutical drug
20 overdose deaths by law-enforcement or other emergency-
21 service responders; and

22 (5) Provide statistical information and analysis regarding
23 the causes of unintentional pharmaceutical drug overdose
24 fatalities.

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

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

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

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

34 (4) Otherwise take any action which, in the determination
35 of a prosecuting attorney or his or her assistants, impairs the
36 ability of the prosecuting attorney, his or her assistants or any
37 law-enforcement officer to perform his or her statutory
38 duties.

39 (c) The Unintentional Pharmaceutical Drug Overdose
40 Fatality Review Team shall submit an annual report to the
41 Governor and to the Legislative Oversight Commission on
42 Health and Human Resources Accountability concerning its
43 activities within the state. The report is due annually on
44 December 1. The report is to include statistical information
45 concerning cases reviewed during the year, trends and
46 patterns concerning these cases and the team's
47 recommendations to reduce the number of unintentional
48 pharmaceutical drug overdose fatalities in the state.

§61-12A-4. Access to Information; Other agencies of government required to cooperate.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the Unintentional Pharmaceutical Drug
3 Overdose Fatality Review Team may request information and
4 records as necessary to carry out its responsibilities. Records
5 and information that may be requested under this section
6 include:

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

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

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

13 (b) State, county and local government agencies shall
14 provide the Unintentional Pharmaceutical Drug Overdose
15 Fatality Review Team with any information requested in
16 writing by the team.

§61-12A-5. Confidentiality.

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

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

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

§61-12A-6. Rules.

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

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

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

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

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

(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.)

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.