

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 167**

4 (By Senator Snyder)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;

7 reported February 14, 2014.]

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11 A BILL to amend and reenact article 7, chapter 64 of the Code of  
12 West Virginia, 1931, as amended, relating generally to the  
13 promulgation of administrative rules by the Department of  
14 Revenue; legislative mandate or authorization for the  
15 promulgation of certain legislative rules by various executive  
16 or administrative agencies of the state; authorizing certain  
17 of the agencies to promulgate certain legislative rules with  
18 various modifications presented to and recommended by the  
19 Legislative Rule-Making Review Committee; authorizing certain  
20 of the agencies to promulgate certain legislative rules with  
21 various modifications presented to and recommended by the  
22 Legislative Rule-Making Review Committee and as amended by the  
23 Legislature; authorizing the State Tax Department to  
24 promulgate a legislative rule relating to the municipal sales

1 and service and use tax administration; authorizing the State  
2 Tax Department to promulgate a legislative rule relating to  
3 the special reclamation tax credit; authorizing the State Tax  
4 Department to promulgate a legislative rule relating to the  
5 withholding or denial of personal income tax refunds from  
6 taxpayers who owe municipal or magistrate court costs;  
7 authorizing the Insurance Commissioner to promulgate a  
8 legislative rule relating to utilization review and benefit  
9 determination; authorizing the Insurance Commissioner to  
10 promulgate a legislative rule relating to a health plan  
11 insurer internal grievance procedure; authorizing the  
12 Insurance Commissioner to promulgate a legislative rule  
13 relating to external review of adverse health insurance  
14 determinations; authorizing the Alcohol Beverage Control  
15 Commission to promulgate a legislative rule relating to  
16 private club licensing; authorizing the Alcohol Beverage  
17 Control Commission to promulgate a legislative rule relating  
18 to farm wineries; authorizing the Alcohol Beverage Control  
19 Commission to promulgate a legislative rule relating to the  
20 sale of wine; authorizing the Alcohol Beverage Control  
21 Commission to promulgate a legislative rule relating to  
22 nonintoxicating beer licensing and operations procedures; and  
23 authorizing the Racing Commission to promulgate a legislative  
24 rule relating to thoroughbred racing.

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

2 That article 7, chapter 64 of the Code of West Virginia, 1931,  
3 as amended, be amended and reenacted to read as follows:

4 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO**  
5 **PROMULGATE LEGISLATIVE RULES.**

6 **§64-7-1. State Tax Department.**

7 (a) The legislative rule filed in the State Register on July  
8 26, 2013, authorized under the authority of section eleven-c,  
9 article ten, chapter eleven of this code, modified by the State Tax  
10 Department to meet the objections of the Legislative Rule-Making  
11 Review Committee and refiled in the State Register on November 26,  
12 2013, relating to the State Tax Department (municipal sales and  
13 service and use tax administration, 110 CSR 28), is authorized.

14 (b) The legislative rule filed in the State Register on July  
15 26, 2013, authorized under the authority of section eleven, article  
16 three, chapter twenty-two of this code, modified by the State Tax  
17 Department to meet the objections of the Legislative Rule-Making  
18 Review Committee and refiled in the State Register on November 26,  
19 2013, relating to the State Tax Department (special reclamation tax  
20 credit, 110 CSR 29), is authorized.

21 (c) The legislative rule filed in the State Register on July  
22 26, 2013, authorized under the authority of section two-c, article  
23 three, chapter fifty of this code, modified by the State Tax  
24 Department to meet the objections of the Legislative Rule-Making

1 Review Committee and refiled in the State Register on November 26,  
2 2013, relating to the State Tax Department (withholding or denial  
3 of personal income tax refunds from taxpayers who owe municipal or  
4 magistrate court costs, 110 CSR 40), is authorized.

5 **§64-7-2. Insurance Commissioner.**

6 (a) The legislative rule filed in the State Register on July  
7 26, 2013, authorized under the authority of section four, article  
8 sixteen-h, chapter thirty-three of this code, modified by the  
9 Insurance Commissioner to meet the objections of the Legislative  
10 Rule-Making Review Committee and refiled in the State Register on  
11 November 1, 2013, relating to the Insurance Commissioner  
12 (utilization review and benefit determination, 114 CSR 95), is  
13 authorized with the following amendments:

14 On page one, subsection 1.1., after the words "and benefit  
15 determinations" by inserting a comma;

16 On page one, subsection 2.1., by striking out the word  
17 "healthcare" and inserting in lieu thereof the words "health care";

18 On page two, subsection 2.6., after the word "specialty" by  
19 striking out the word "as" and inserting in lieu thereof the word  
20 "that";

21 On page three, subsection 2.15., by striking out the word "no"  
22 and inserting in lieu thereof the word "not";

23 On page three, subsection 2.16., by striking out the words  
24 "except as otherwise specifically exempted in this definition" and

1 inserting in lieu thereof the words "but excluding the excepted  
2 benefits defined in 42 U.S.C. § 300gg-91 and as otherwise  
3 specifically excepted in this rule";

4 On page five, subsection 2.17., by striking out the word  
5 "state" and inserting in lieu thereof the words "West Virginia";

6 On page five, subsection 2.24., by striking out the word "in"  
7 and inserting in lieu thereof the word "an";

8 On page six, subsection 2.28., by striking out the word "that"  
9 and inserting in lieu thereof the words "the one";

10 On page six, subdivision 2.30.a., by striking out the words  
11 "the covered person's life, health or ability to regain maximum  
12 function or in the opinion of an attending health care professional  
13 with knowledge of the covered person's medical condition, would  
14 subject the covered person to severe pain that cannot be adequately  
15 managed without the health care service or treatment that is the  
16 subject of the request." and inserting in lieu thereof the words  
17 "the life or health of the covered person or the ability of the  
18 covered person to regain maximum function; or";

19 On page six, after subdivision 2.30.a., by inserting a new  
20 subdivision, designated subdivision 2.30.b., to read as follows:

21 2.30.b. In the opinion of an attending health care  
22 professional with knowledge of the covered person's medical  
23 condition, would subject the covered person to severe pain that  
24 cannot be adequately managed without the health care service or

1 treatment that is the subject of the request.;

2 And by relettering the remaining subdivisions;

3 On page six, subdivision 2.30.b., by striking out "2.30.a" and  
4 inserting in lieu thereof "2.30.d";

5 On page eight, subsection 6.1., by striking out the words "an  
6 entity" and inserting in lieu thereof the words "a person";

7 On page eight, subsection 6.1., after the word "Commissioner"  
8 by inserting the words "or by statute or legislative rule";

9 On page nine, after paragraph 6.3.a.4., by inserting a new  
10 paragraph, designated paragraph 6.3.a.5., to read as follows:

11 6.3.a.5. For purposes of calculating the time period for  
12 refiling the benefit request or claim, the time period shall begin  
13 to run upon the covered person's receipt of the notice of  
14 opportunity to resubmit.;

15 On page ten, subdivision 7.1.b., by striking out the words "a  
16 determination is required to be made under subsections 7.2 and 7.4"  
17 and inserting in lieu thereof the words "prospective and  
18 retrospective review determinations are required to be made";

19 On page eleven, paragraph 7.1.e.1., after the word "number" by  
20 inserting the word "of";

21 On page twelve, subdivision 7.2.b., by striking out the words  
22 "health carrier" and inserting in lieu thereof the word "issuer";

23 On page fourteen, subdivision 7.3.c., by striking out the  
24 comma and the word "and";

1 On page fifteen, subdivision 8.1.a., by striking out the words  
2 "health carrier" and inserting in lieu thereof the word "issuer";

3 On page fifteen, after subdivision 8.1.b., by inserting a new  
4 paragraph, designated paragraph 8.1.b.1., to read as follows:

5 8.1.b.1. If the covered person has failed to provide  
6 sufficient information for the issuer to determine whether, or to  
7 what extent, the benefits requested are covered benefits or payable  
8 under the issuer's health benefit plan, the issuer shall notify the  
9 covered person as soon as possible, but in no event later than  
10 twenty-four (24) hours after receipt of the request, either orally  
11 or, if requested by the covered person, in writing of this failure  
12 and state what specific information is needed. The issuer shall  
13 provide the covered person a reasonable period of time to submit  
14 the necessary information, taking into account the circumstances,  
15 but in no event less than forty-eight (48) hours after notifying  
16 the covered person or the covered person's authorized  
17 representative of the failure to submit sufficient information.;

18 And by renumbering the remaining paragraphs;

19 On page seventeen, subparagraph 8.2.a.9.A., by striking out  
20 "8.2.a.8" and inserting in lieu thereof "8.2.a.7";

21 On page seventeen, subparagraph 8.2.a.9.B., by striking out  
22 "subparagraph 8.2.a.9.A" and inserting in lieu thereof "paragraph  
23 8.2.a.8";

24 On page nineteen, subdivision 9.3.d., after the words

1 "providers, paragraph" by striking out "9.3.c.3" and inserting in  
2 lieu thereof "9.3.c.1";

3 On page nineteen, subdivision 9.3.d., after the words "amount  
4 in paragraph" by striking out "9.3.c.3" and inserting in lieu  
5 thereof "9.3.c.1";

6 And,

7 On page nineteen, paragraph 9.3.d.2., after the word  
8 "benefits" by adding a period.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2013, relating to the Insurance Commissioner (health plan insurer internal grievance procedure, 114 CSR 96), is authorized with the following amendments:

On page one, section two, by striking out the heading "§114-96-1. Definitions." and inserting in lieu thereof the heading "§114-96-2. Definitions.";

On page one, subsection 2.1., by striking out the word "healthcare" and inserting in lieu thereof the words "health care";

On page one, subsection 2.1., after the word "terminated" by adding a period;

On page two, subdivision 2.3.a., by striking out the word



"external" and inserting in lieu thereof the word "internal";

On page two, subdivision 2.3.c., after the word "professional" by adding a semicolon;

On page two, subsection 2.6., by striking out the word "as" and inserting in lieu thereof the word "that";

On page three, subsection 2.15., by striking out the word "no" and inserting in lieu thereof the word "not";

On page four, subsection 2.18., by striking out the words "except as otherwise specifically exempted in this definition" and inserting in lieu thereof the words "but excluding the excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule";

On page five, subsection 2.19., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

On page six, subsection 2.26., by striking out the word "in" and inserting in lieu thereof the word "an";

On page seven, subsection 2.30., by striking out the word "that" and inserting in lieu thereof the words "the one";

On page seven, subdivision 2.32.c., by striking out "2.35.b" and inserting in lieu thereof "2.32.d";

On page nine, subsection 4.2., by striking out the words "subdivision a of";

On page ten, subdivision 5.4.a., after "5.4.a." by striking out the period;

On page eleven, after subdivision 5.6.c., by inserting a new subdivision, designated subdivision 5.6.d., to read as follows:

5.6.d. The issuer shall make the provisions of subsection 5.4 known to the covered person within three working days after the date of receipt of the grievance.;

On page thirteen, subdivision 5.8.g., by striking out the word "upholds" and inserting in lieu thereof the word "denies";

On page thirteen, paragraph 5.8.g.4., after the word "either" by inserting the word "the";

On page thirteen, paragraph 5.8.g.5., after the word "circumstances" by inserting a comma;

On page thirteen, paragraph 5.8.g.5., by striking out the word "provide" and inserting in lieu thereof the word "provided";

On page thirteen, subparagraph 5.8.g.6.A., by striking out "5.4.g.4" and inserting in lieu thereof "5.8.g.4";

On page thirteen, subparagraph 5.8.g.6.B., by striking out "5.4.g.5" and inserting in lieu thereof "5.8.g.5";

On page thirteen, by striking out paragraph 5.8.h.1. in its entirety;

On page fourteen, by striking out paragraph 5.8.h.2. in its entirety;

And by renumbering the remaining paragraphs;

On page fourteen, paragraph 5.8.h.3., by striking out "if the covered person decides not to file for an additional voluntary

review of the first level review decision involving an adverse determination”;

On page fourteen, paragraph 5.9.a.3., after the words “notices” by striking out the comma;

On page fifteen, subdivision 6.4.b., after “6.4.b.” by striking out the period;

On page sixteen, subdivision 6.5.d., after the semicolon by adding the word “and”;

On page sixteen, by striking out subdivision 6.5.e. in its entirety;

And by relettering the remaining subdivision;

On page sixteen, by striking out paragraphs 6.5.e.1 and 6.5.e.2 in their entirety;

On page sixteen, subsection 7.2., by striking out “5.1” and inserting in lieu thereof “7.1”;

On page eighteen, subparagraph 7.8.a.7.A., after the words “as well as” by inserting the word “a”;

On page eighteen, subparagraph 7.8.a.7.A., after the word “reaching” by inserting the word “the”;

On page nineteen, subparagraph 7.8.a.7.E., after the word “circumstances” by inserting a comma;

On page nineteen, part 7.8.a.7.F.3., after the word “et” by striking out the period;

On page nineteen, part 7.8.a.7.F.6., after the word “claim” by

inserting a comma;

And,

On page twenty, after subparagraph 7.8.b.1.B., by inserting a new subparagraph, designated subparagraph 7.8.b.1.C., to read as follows:

7.8.b.1.C. Include in the English versions of all notices a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the carrier.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2013, relating to the Insurance Commissioner (external review of adverse health insurance determinations, 114 CSR 97), is authorized with the following amendments:

On page one, subsection 2.1., after the word "terminated" by adding period;

On page two, subdivision 2.3.c., after the word "professional" by adding a semicolon;

On page two, subdivision 2.4.c., by striking out "2.4a and 2.4b" and inserting in lieu thereof "2.4.a and 2.4.b";

On page two, subdivision 2.4.d., by striking out "2.4a, 2.4b

and 2.4c" and inserting in lieu thereof "2.4.a, 2.4.b and 2.4.c";

On page three, subsection 2.7., after the word "Commissioner" by adding a period;

On page three, subsection 2.12., after the words "Emergency medical condition" by striking out the single quotation mark and inserting in lieu thereof a double quotation mark;

On page four, subsection 2.17., by striking out the words "except as otherwise specifically exempted in this definition" and inserting in lieu thereof the words "but excluding the excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule";

On page eight, subsection 3.1., by striking out the words "A written" and inserting in lieu thereof the words "An issuer shall notify the covered person in writing of the covered person's right to request an external review. Such a written";

On page eight, subdivision 3.1.c., by striking out the words "subsection 15.1" and inserting in lieu thereof the words "section 14";

On page nine, paragraph 3.1.e.1., before the words "would seriously" by striking out the comma;

On page nine, paragraph 3.1.f.1., after the word "life" by striking out the comma and inserting in lieu thereof the words "or health or";

On page ten, subsection 5.3., by striking out the words

"expedited review of a grievance involving an adverse determination" and inserting in lieu thereof the words "expedited internal review of a grievance involving an adverse determination pursuant to W. Va. Code of St. R. §114-96";

On page ten, subdivision 5.3.a., after the word "Code" by inserting the word "of";

On page eleven, subsection 6.2., after the word "consideration" by striking out the word "on" and inserting in lieu thereof the word "of";

On page twelve, subdivision 6.5.a, by striking out the words "two business days" and inserting in lieu thereof the words "one business day";

On page thirteen, subdivision 6.6.d., by striking out the word "internal" and inserting in lieu thereof the word "independent";

On page thirteen, subsection 6.8., after the words "receipt of the request for an external review" by inserting the words "and no later than one business day after making the decision";

On page seventeen, subdivision 8.5.b., after "8.5.b." by striking out the period;

On page seventeen, subdivision 8.5.c., by striking out "8.8" and inserting in lieu thereof "8.9";

On page eighteen, subsection 8.6., after "IRO" by striking out the comma;

On page eighteen, subdivision 8.6.a., by striking out the word

"dely" and inserting in lieu thereof the word "delay";

On page nineteen, paragraph 8.9.a.2., after the words "services or treatments" by inserting the words "would not be substantially increased over those of available standard health care services or treatments";

On page twenty, subdivision 8.11.b., by striking out "8.12.d" and inserting in lieu thereof "8.11.d";

On page twenty-one, subdivision 8.11.c., after "8.11.c", by inserting a period;

On page twenty-one, subdivision 8.11.d., after "8.11.d", by inserting a period;

On page twenty-one, paragraph 8.11.d.1., after "8.11.d.1", by inserting a period;

On page twenty-one, paragraph 8.11.d.2., after "8.11.d.2", by inserting a period;

On page twenty-one, paragraph 8.11.d.3., after "8.11.d.3", by inserting a period;

On page twenty-one, paragraph 8.11.d.3., by striking the words "pursuant to subdivision 8.11.a";

On page twenty-two, subsection 8.12., by striking out the word "amount" and inserting in lieu thereof the word "among";

On page twenty-three, subdivision 9.2.f., after the word "parties" by striking out the comma;

On page twenty-three, paragraph 9.2.f.1., after "IRO" by

striking out the comma and the words "except that a party that unreasonably refuses to stipulate to limit the record may be taxed by the court for the additional costs involved";

On page twenty-four, subsection 10.2, by striking out the word "as" and inserting in lieu thereof a comma;

On page twenty-five, subdivision 10.4.c., by striking out subdivision 10.4.c. in its entirety;

On page twenty-seven, paragraph 11.4.a.2., after the word "review" by inserting a comma and the words "any known close relative of the covered person,";

On page twenty-seven, after paragraph 11.4.a.3., by inserting two new paragraphs, designated paragraph, 11.4.a.4. and 11.4.a.5., to read as follows:

11.4.a.4. Any administrator, fiduciary, employee or sponsor of an employee welfare benefit plan as defined in 29 U.S.C. 1002(1), if any, under which the covered person's request for external review arises;

11.4.a.5. A trade association of group health plans or issuers, or a trade association of health care providers;

And by renumbering the remaining paragraphs;

On page twenty-seven, subdivision 11.4.b., by striking out all of subdivision 11.4.b. and inserting in lieu thereof a new subdivision, designated subdivision 11.4.b., to read as follows:

11.4.b. In determining whether an IRO or a clinical reviewer



of the IRO has a material professional, familial or financial conflict of interest for purposes of subdivision 11.4.a, the Commissioner may disregard the mere appearance of a conflict of interest.;

On page twenty-eight, section twelve, by striking out section twelve in its entirety;

And by renumbering the remaining sections;

On page twenty-eight, subsection 13.1., by striking out "13.1.a" and inserting in lieu thereof "12.1.a"

On page twenty-nine, paragraph 13.2.b.2., by striking out "paragraph 13.2.b.2" and inserting in lieu thereof "paragraph 12.2.b.1";

On page thirty, subsection 15.2, by striking out "15.1" and inserting in lieu thereof "14.1";

On page thirty, subsection 15.3, by striking out "15.2" and inserting in lieu thereof "14.2";

And,

On page thirty, after subsection 15.3, by adding a new section, designated section fifteen, to read as follows:

§114-97-15. Penalties. Any issuer failing to comply with the requirements of this rule is subject to the penalties prescribed in W. Va. Code §33-3-11.

**§64-7-3. Alcohol Beverage Control Commission.**

(a) The legislative rule filed in the State Register on July

26, 2013, authorized under the authority of section ten, article seven, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Alcohol Beverage Commission (private club licensing, 175 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section sixteen, article two, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Alcohol Beverage Commission (farm wineries, 175 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section twenty-three, article eight, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Alcohol Beverage Commission (sale of wine, 175 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section twenty-two, article sixteen, chapter eleven of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Alcohol Beverage Commission (nonintoxicating beer licensing and operations procedures, 176 CSR 1), is authorized.

**§64-7-4. Racing Commission.**

The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized.