

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 167

(SENATOR SNYDER, *ORIGINAL SPONSOR*)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]



E N R O L L E D

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(SENATOR SNYDER, *original sponsor*)

[Passed March 8, 2014; in effect from passage.]



AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the municipal sales and service and use tax administration; authorizing the State Tax Department to promulgate a legislative rule relating to the special reclamation tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal or magistrate court costs;

authorizing the Insurance Commissioner to promulgate a legislative rule relating to utilization review and benefit determination; authorizing the Insurance Commissioner to promulgate a legislative rule relating to a health plan insurer internal grievance procedure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to external review of adverse health insurance determinations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to farm wineries; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the sale of wine; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF
REVENUE TO PROMULGATE
LEGISLATIVE RULES.**

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the State Register on July
2 26, 2013, authorized under the authority of section eleven-c,
3 article ten, chapter eleven of this code, modified by the State
4 Tax Department to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on November 26, 2013, relating to the State Tax

7 Department (municipal sales and service and use tax
8 administration, 110 CSR 28), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 26, 2013, authorized under the authority of section eleven,
11 article three, chapter twenty-two of this code, modified by the
12 State Tax Department to meet the objections of the
13 Legislative Rule-Making Review Committee and refiled in
14 the State Register on November 26, 2013, relating to the
15 State Tax Department (special reclamation tax credit, 110
16 CSR 29), is authorized.

17 (c) The legislative rule filed in the State Register on July
18 26, 2013, authorized under the authority of section two-c,
19 article three, chapter fifty of this code, modified by the State
20 Tax Department to meet the objections of the Legislative
21 Rule-Making Review Committee and refiled in the State
22 Register on November 26, 2013, relating to the State Tax
23 Department (withholding or denial of personal income tax
24 refunds from taxpayers who owe municipal or magistrate
25 court costs, 110 CSR 40), is authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on July
2 26, 2013, authorized under the authority of section four,
3 article sixteen-h, chapter thirty-three of this code, modified
4 by the Insurance Commissioner to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on November 1, 2013, relating to the
7 Insurance Commissioner (utilization review and benefit
8 determination, 114 CSR 95), is authorized with the following
9 amendments:

10 On page one, subsection 1.1., after the words “and benefit
11 determinations” by inserting a comma;

12 On page one, subsection 2.1., by striking out the word
13 “healthcare” and inserting in lieu thereof the words “health
14 care”;

15 On page two, subsection 2.6., after the word “specialty” by
16 striking out the word “as” and inserting in lieu thereof the
17 word “that”;

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

20 On page three, subsection 2.16., by striking out the words
21 “except as otherwise specifically exempted in this definition”
22 and inserting in lieu thereof the words “but excluding the
23 excepted benefits defined in 42 U.S.C. § 300gg-91 and as
24 otherwise specifically excepted in this rule”;

25 On page five, subsection 2.17., by striking out the word
26 “state” and inserting in lieu thereof the words “West Virginia”;

27 On page five, subsection 2.24., by striking out the word
28 “in” and inserting in lieu thereof the word “an”;

29 On page six, subsection 2.28., by striking out the word
30 “that” and inserting in lieu thereof the words “the one”;

31 On page six, subdivision 2.30.a., by striking out the words
32 “the covered person’s life, health or ability to regain maximum
33 function or in the opinion of an attending health care
34 professional with knowledge of the covered person’s medical
35 condition, would subject the covered person to severe pain that
36 cannot be adequately managed without the health care service
37 or treatment that is the subject of the request.” and inserting in
38 lieu thereof the words “the life or health of the covered person
39 or the ability of the covered person to regain maximum
40 function; or”;

41 On page six, after subdivision 2.30.a., by inserting a new
42 subdivision, designated subdivision 2.30.b., to read as
43 follows:

44 2.30.b. In the opinion of an attending health care
45 professional with knowledge of the covered person's medical
46 condition, would subject the covered person to severe pain
47 that cannot be adequately managed without the health care
48 service or treatment that is the subject of the request.;

49 And by relettering the remaining subdivisions;

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

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

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

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

59 6.3.a.5. For purposes of calculating the time period for
60 refiling the benefit request or claim, the time period shall
61 begin to run upon the covered person's receipt of the notice
62 of opportunity to resubmit.;

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

68 On page eleven, paragraph 7.1.e.1., after the word
69 “number” by inserting the word “of”;

70 On page twelve, subdivision 7.2.b., by striking out the
71 words “health carrier” and inserting in lieu thereof the word
72 “issuer”;

73 On page fourteen, subdivision 7.3.c., by striking out the
74 comma and the word “and”;

75 On page fifteen, subdivision 8.1.a., by striking out the
76 words “health carrier” and inserting in lieu thereof the word
77 “issuer”;

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

80 8.1.b.1. If the covered person has failed to provide
81 sufficient information for the issuer to determine whether, or
82 to what extent, the benefits requested are covered benefits or
83 payable under the issuer’s health benefit plan, the issuer shall
84 notify the covered person as soon as possible, but in no event
85 later than twenty-four (24) hours after receipt of the request,
86 either orally or, if requested by the covered person, in writing
87 of this failure and state what specific information is needed.
88 The issuer shall provide the covered person a reasonable
89 period of time to submit the necessary information, taking into
90 account the circumstances, but in no event less than forty-eight
91 (48) hours after notifying the covered person or the covered
92 person’s authorized representative of the failure to submit
93 sufficient information.;

94 And by renumbering the remaining paragraphs;

95 On page seventeen, subparagraph 8.2.a.9.A., by striking
96 out “8.2.a.8” and inserting in lieu thereof “8.2.a.7”;

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97 On page seventeen, subparagraph 8.2.a.9.B., by striking
98 out “subparagraph 8.2.a.9.A” and inserting in lieu thereof
99 “paragraph 8.2.a.8”;

100 On page nineteen, subdivision 9.3.d., after the words
101 “providers, paragraph” by striking out “9.3.c.3” and inserting
102 in lieu thereof “9.3.c.1”;

103 On page nineteen, subdivision 9.3.d., after the words
104 “amount in paragraph” by striking out “9.3.c.3” and inserting
105 in lieu thereof “9.3.c.1”;

106 And,

107 On page nineteen, paragraph 9.3.d.2., after the word
108 “benefits” by adding a period.

109 (b) The legislative rule filed in the State Register on July
110 26, 2013, authorized under the authority of section four,
111 article sixteen-h, chapter thirty-three of this code, modified
112 by the Insurance Commissioner to meet the objections of the
113 Legislative Rule-Making Review Committee and refiled in
114 the State Register on November 1, 2013, relating to the
115 Insurance Commissioner (health plan insurer internal
116 grievance procedure, 114 CSR 96), is authorized with the
117 following amendments:

118 On page one, section two, by striking out the heading
119 “§114-96-1. Definitions.” and inserting in lieu thereof the
120 heading “§114-96-2. Definitions.”;

121 On page one, subsection 2.1., by striking out the word
122 “healthcare” and inserting in lieu thereof the words “health
123 care”;

124 On page one, subsection 2.1., after the word “terminated”
125 by adding a period;

126 On page two, subdivision 2.3.a., by striking out the word
127 “external” and inserting in lieu thereof the word “internal”;

128 On page two, subdivision 2.3.c., after the word
129 “professional” by adding a semicolon;

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

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

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

139 On page five, subsection 2.19., by striking out the word
140 “state” and inserting in lieu thereof the words “West
141 Virginia”;

142 On page six, subsection 2.26., by striking out the word
143 “in” and inserting in lieu thereof the word “an”;

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

146 On page seven, subdivision 2.32.c., by striking out
147 “2.35.b” and inserting in lieu thereof “2.32.d”;

148 On page nine, subsection 4.2., by striking out the words
149 “subdivision a of”;

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

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

155 5.6.d. The issuer shall make the provisions of subsection
156 5.4 known to the covered person within three working days
157 after the date of receipt of the grievance.;

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

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

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

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

168 On page thirteen, subparagraph 5.8.g.6.A., by striking out
169 "5.4.g.4" and inserting in lieu thereof "5.8.g.4";

170 On page thirteen, subparagraph 5.8.g.6.B., by striking out
171 "5.4.g.5" and inserting in lieu thereof "5.8.g.5";

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

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

176 And by renumbering the remaining paragraphs;

177 On page fourteen, paragraph 5.8.h.3., by striking out “if
178 the covered person decides not to file for an additional
179 voluntary review of the first level review decision involving
180 an adverse determination”;

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

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

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

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

189 And by relettering the remaining subdivision;

190 On page sixteen, by striking out paragraphs 6.5.e.1 and
191 6.5.e.2 in their entirety;

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

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

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

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

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

202 On page nineteen, part 7.8.a.7.F.6., after the word
203 “claim” by inserting a comma;

204 And,

205 On page twenty, after subparagraph 7.8.b.1.B., by
206 inserting a new subparagraph, designated subparagraph
207 7.8.b.1.C., to read as follows:

208 7.8.b.1.C. Include in the English versions of all notices
209 a statement prominently displayed in any applicable non-
210 English language clearly indicating how to access the
211 language services provided by the carrier.

212 (c) The legislative rule filed in the State Register on July
213 26, 2013, authorized under the authority of section four,
214 article sixteen-h, chapter thirty-three of this code, modified
215 by the Insurance Commissioner to meet the objections of the
216 Legislative Rule-Making Review Committee and refiled in
217 the State Register on November 1, 2013, relating to the
218 Insurance Commissioner (external review of adverse health
219 insurance determinations, 114 CSR 97), is authorized with
220 the following amendments:

221 On page one, subsection 2.1., after the word “terminated”
222 by adding period;

223 On page two, subdivision 2.3.c., after the word
224 “professional” by adding a semicolon;

225 On page two, subdivision 2.4.c., by striking out “2.4a and
226 2.4b” and inserting in lieu thereof “2.4.a and 2.4.b”;

227 On page two, subdivision 2.4.d., by striking out “2.4a,
228 2.4b and 2.4c” and inserting in lieu thereof “2.4.a, 2.4.b and
229 2.4.c”;

230 On page three, subsection 2.7., after the word
231 “Commissioner” by adding a period;

232 On page three, subsection 2.12., after the words
233 “Emergency medical condition” by striking out the single
234 quotation mark and inserting in lieu thereof a double
235 quotation mark;

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

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

245 On page eight, subdivision 3.1.c., by striking out the
246 words “subsection 15.1” and inserting in lieu thereof the
247 words “section 14”;

248 On page nine, paragraph 3.1.e.1., before the words
249 “would seriously” by striking out the comma;

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

253 On page ten, subsection 5.3., by striking out the words
254 “expedited review of a grievance involving an adverse

255 determination” and inserting in lieu thereof the words
256 “expedited internal review of a grievance involving an
257 adverse determination pursuant to W. Va. Code of St. R.
258 §114-96”;

259 On page ten, subdivision 5.3.a., after the word “Code” by
260 inserting the word “of”;

261 On page eleven, subsection 6.2., after the word
262 “consideration” by striking out the word “on” and inserting
263 in lieu thereof the word “of”;

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

267 On page thirteen, subdivision 6.6.d., by striking out the
268 word “internal” and inserting in lieu thereof the word
269 “independent”;

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

274 On page seventeen, subdivision 8.5.b., after “8.5.b.” by
275 striking out the period;

276 On page seventeen, subdivision 8.5.c., by striking out
277 “8.8” and inserting in lieu thereof “8.9”;

278 On page eighteen, subsection 8.6., after “IRO” by striking
279 out the comma;

280 On page eighteen, subdivision 8.6.a., by striking out the
281 word “dely” and inserting in lieu thereof the word “delay”;

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

286 On page twenty, subdivision 8.11.b., by striking out
287 “8.12.d” and inserting in lieu thereof “8.11.d”;

288 On page twenty-one, subdivision 8.11.c., after “8.11.c”,
289 by inserting a period;

290 On page twenty-one, subdivision 8.11.d., after “8.11.d”,
291 by inserting a period;

292 On page twenty-one, paragraph 8.11.d.1., after
293 “8.11.d.1”, by inserting a period;

294 On page twenty-one, paragraph 8.11.d.2., after
295 “8.11.d.2”, by inserting a period;

296 On page twenty-one, paragraph 8.11.d.3., after
297 “8.11.d.3”, by inserting a period;

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

300 On page twenty-two, subsection 8.12., by striking out the
301 word “amount” and inserting in lieu thereof the word
302 “among”;

303 On page twenty-three, subdivision 9.2.f., after the word
304 “parties” by striking out the comma;

305 On page twenty-three, paragraph 9.2.f.1., after “IRO” by
306 striking out the comma and the words “except that a party
307 that unreasonably refuses to stipulate to limit the record may
308 be taxed by the court for the additional costs involved”;

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

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

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

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

319 11.4.a.4. Any administrator, fiduciary, employee or
320 sponsor of an employee welfare benefit plan as defined in 29
321 U.S.C. 1002(1), if any, under which the covered person’s
322 request for external review arises;

323 11.4.a.5. A trade association of group health plans or
324 issuers, or a trade association of health care providers;

325 And by renumbering the remaining paragraphs;

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

330 11.4.b. In determining whether an IRO or a clinical
331 reviewer of the IRO has a material professional, familial or
332 financial conflict of interest for purposes of subdivision
333 11.4.a, the Commissioner may disregard the mere appearance
334 of a conflict of interest.;

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

337 And by renumbering the remaining sections;

338 On page twenty-eight, subsection 13.1., by striking out
339 "13.1.a" and inserting in lieu thereof "12.1.a"

340 On page twenty-nine, paragraph 13.2.b.2., by striking out
341 "paragraph 13.2.b.2" and inserting in lieu thereof "paragraph
342 12.2.b.1";

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

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

347 And,

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

350 §114-97-15. Penalties. Any issuer failing to comply with
351 the requirements of this rule is subject to the penalties
352 prescribed in W. Va. Code §33-3-11.

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

1 (a) The legislative rule filed in the State Register on July
2 26, 2013, authorized under the authority of section ten, article
3 seven, chapter sixty of this code, modified by the Alcohol
4 Beverage Control Commission to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the State Register on October 31, 2013, relating to the
7 Alcohol Beverage Commission (private club licensing, 175
8 CSR 2), is authorized.

9 (b) The legislative rule filed in the State Register on July
10 26, 2013, authorized under the authority of section sixteen,

11 article two, chapter sixty of this code, modified by the
12 Alcohol Beverage Control Commission to meet the
13 objections of the Legislative Rule-Making Review
14 Committee and refiled in the State Register on October 31,
15 2013, relating to the Alcohol Beverage Commission (farm
16 wineries, 175 CSR 3), is authorized.

17 (c) The legislative rule filed in the State Register on July
18 26, 2013, authorized under the authority of section twenty-
19 three, article eight, chapter sixty of this code, modified by the
20 Alcohol Beverage Control Commission to meet the
21 objections of the Legislative Rule-Making Review
22 Committee and refiled in the State Register on October 31,
23 2013, relating to the Alcohol Beverage Commission (sale of
24 wine, 175 CSR 4), is authorized.

25 (d) The legislative rule filed in the State Register on July
26 26, 2013, authorized under the authority of section twenty-
27 two, article sixteen, chapter eleven of this code, modified by
28 the Alcohol Beverage Control Commission to meet the
29 objections of the Legislative Rule-Making Review
30 Committee and refiled in the State Register on October 31,
31 2013, relating to the Alcohol Beverage Commission
32 (nonintoxicating beer licensing and operations procedures,
33 176 CSR 1), is authorized.

§64-7-4. Racing Commission.

1 The legislative rule filed in the State Register on July 26,
2 2013, authorized under the authority of section six, article
3 twenty-three, chapter nineteen of this code, modified by the
4 Racing Commission to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on October 31, 2013, relating to the Racing
7 Commission (thoroughbred racing, 178 CSR 1), is authorized
8 with the following amendment:

9 On page fifteen, subsection 8.5.b., line twenty-two,
10 following the words “stewards shall have authority to” by
11 striking the word “charge”, and inserting in lieu thereof
12 “issue a ruling citing”; and


13 On page eighteen, subsection 9.2., line six, following the
14 words “health certificates”, by striking the word “Coggins”
15 and inserting in lieu thereof “current negative Coggins test
16 for equine infectious anemia (EIA)”.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect from passage. 

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor