

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 167

(By Senator Snyder)

[Originating in the Committee on the Judiciary;
reported February 14, 2014.]

A BILL 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
TAX AND 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”
16 by 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
27 Virginia”;

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

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

32 On page six, subdivision 2.30.a., by striking out the
33 words “the covered person’s life, health or ability to regain

34 maximum function or in the opinion of an attending health
35 care professional with knowledge of the covered person's
36 medical condition, would subject the covered person to
37 severe pain that cannot be adequately managed without the
38 health care service or treatment that is the subject of the
39 request." and inserting in lieu thereof the words "the life or
40 health of the covered person or the ability of the covered
41 person to regain maximum function; or";

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

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

50 And by relettering the remaining subdivisions;

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

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

55 On page eight, subsection 6.1., after the word
56 “Commissioner” by inserting the words “or by statute or
57 legislative rule”

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

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

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

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

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

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

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

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

82 8.1.b.1. If the covered person has failed to provide
83 sufficient information for the issuer to determine whether, or
84 to what extent, the benefits requested are covered benefits or
85 payable under the issuer’s health benefit plan, the issuer shall
86 notify the covered person as soon as possible, but in no event
87 later than twenty-four (24) hours after receipt of the request,
88 either orally or, if requested by the covered person, in writing
89 of this failure and state what specific information is needed.

90 The issuer shall provide the covered person a reasonable
91 period of time to submit the necessary information, taking
92 into account the circumstances, but in no event less than
93 forty-eight (48) hours after notifying the covered person or
94 the covered person's authorized representative of the failure
95 to submit sufficient information.;

96 And by renumbering the remaining paragraphs;

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

99 On page seventeen, subparagraph 8.2.a.9.B., by striking
100 out "subparagraph 8.2.a.9.A" and inserting in lieu thereof
101 "paragraph 8.2.a.8";

102 On page nineteen, subdivision 9.3.d., after the words
103 "providers, paragraph" by striking out "9.3.c.3" and inserting
104 in lieu thereof "9.3.c.1";

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

108 And,

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

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

120 On page one, section two, by striking out the heading
121 “§114-96-1. Definitions.” and inserting in lieu thereof the
122 heading “§114-96-2. Definitions.”;

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

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

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

129 “external” and inserting in lieu thereof the word “internal”;

130 On page two, subdivision 2.3.c., after the word

131 “professional” by adding a semicolon;

132 On page two, subsection 2.6., by striking out the word

133 “as” and inserting in lieu thereof the word “that”;

134 On page three, subsection 2.15., by striking out the word

135 “no” and inserting in lieu thereof the word “not”;

136 On page four, subsection 2.18., by striking out the words

137 “except as otherwise specifically exempted in this definition”

138 and inserting in lieu thereof the words “but excluding the

139 excepted benefits defined in 42 U.S.C. § 300gg-91 and as

140 otherwise specifically excepted in this rule”;

141 On page five, subsection 2.19., by striking out the word

142 “state” and inserting in lieu thereof the words “West

143 Virginia”;

144 On page six, subsection 2.26., by striking out the word

145 “in” and inserting in lieu thereof the word “an”;

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

148 On page seven, subdivision 2.32.c., by striking out
149 “2.35.b” and inserting in lieu thereof “2.32.d”;

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

152 On page ten, subdivision 5.4.a., after “5.4.a.” by striking
153 out the period;

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

157 5.6.d. The issuer shall make the provisions of subsection
158 5.4 known to the covered person within three working days
159 after the date of receipt of the grievance.;

160 On page thirteen, subdivision 5.8.g., by striking out the
161 word “upholds” and inserting in lieu thereof the word
162 “denies”;

163 On page thirteen, paragraph 5.8.g.4., after the word
164 “either” by inserting the word “the”;

165 On page thirteen, paragraph 5.8.g.5., after the word
166 “circumstances” by inserting a comma;

167 On page thirteen, paragraph 5.8.g.5., by striking out the
168 word “provide” and inserting in lieu thereof the word
169 “provided”;

170 On page thirteen, subparagraph 5.8.g.6.A., by striking out
171 “5.4.g.4” and inserting in lieu thereof “5.8.g.4”;

172 On page thirteen, subparagraph 5.8.g.6.B., by striking out
173 “5.4.g.5” and inserting in lieu thereof “5.8.g.5”;

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

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

178 And by renumbering the remaining paragraphs;

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

183 On page fourteen, paragraph 5.9.a.3., after the words

184 “notices” by striking out the comma;

185 On page fifteen, subdivision 6.4.b., after “6.4.b.” by

186 striking out the period;

187 On page sixteen, subdivision 6.5.d., after the semicolon

188 by adding the word “and”;

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

190 entirety;

191 And by relettering the remaining subdivision;

192 On page sixteen, by striking out paragraphs 6.5.e.1 and

193 6.5.e.2 in their entirety;

194 On page sixteen, subsection 7.2., by striking out “5.1”

195 and inserting in lieu thereof “7.1”;

196 On page eighteen, subparagraph 7.8.a.7.A., after the

197 words “as well as” by inserting the word “a”;

198 On page eighteen, subparagraph 7.8.a.7.A., after the word

199 “reaching” by inserting the word “the”;

200 On page nineteen, subparagraph 7.8.a.7.E., after the word

201 “circumstances” by inserting a comma;

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

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

206 And,

207 On page twenty, after subparagraph 7.8.b.1.B., by
208 inserting a new subparagraph, designated subparagraph
209 7.8.b.1.C., to read as follows:

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

214 (c) The legislative rule filed in the State Register on July
215 26, 2013, authorized under the authority of section four,
216 article sixteen-h, chapter thirty-three of this code, modified
217 by the Insurance Commissioner to meet the objections of the
218 Legislative Rule-Making Review Committee and refiled in
219 the State Register on November 1, 2013, relating to the

220 Insurance Commissioner (external review of adverse health
221 insurance determinations, 114 CSR 97), is authorized with
222 the following amendments:

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

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

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

229 On page two, subdivision 2.4.d., by striking out “2.4a,
230 2.4b and 2.4c” and inserting in lieu thereof “2.4.a, 2.4.b and
231 2.4.c”;

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

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

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

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

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

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

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

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

257 determination” and inserting in lieu thereof the words
258 “expedited internal review of a grievance involving an
259 adverse determination pursuant to W. Va. Code of St. R.
260 §114-96”;

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

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

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

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

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

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

277 On page seventeen, subdivision 8.5.c., by striking out
278 “8.8” and inserting in lieu thereof “8.9”;

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

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

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

287 On page twenty, subdivision 8.11.b., by striking out
288 “8.12.d” and inserting in lieu thereof “8.11.d”;

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

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

293 On page twenty-one, paragraph 8.11.d.1., after
294 “8.11.d.1”, by inserting a period;

295 On page twenty-one, paragraph 8.11.d.2., after
296 “8.11.d.2”, by inserting a period;

297 On page twenty-one, paragraph 8.11.d.3., after
298 “8.11.d.3”, by inserting a period;

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

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

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

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

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

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

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

317 On page twenty-seven, after paragraph 11.4.a.3., by
318 inserting two new paragraphs, designated paragraph,
319 11.4.a.4. and 11.4.a.5., to read as follows:

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

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

326 And by renumbering the remaining paragraphs;

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

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

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

338 And by renumbering the remaining sections;

339 On page twenty-eight, subsection 13.1., by striking out
340 “13.1.a” and inserting in lieu thereof “12.1.a”

341 On page twenty-nine, paragraph 13.2.b.2., by striking out
342 “paragraph 13.2.b.2” and inserting in lieu thereof “paragraph
343 12.2.b.1”;

344 On page thirty, subsection 15.2, by striking out “15.1”
345 and inserting in lieu thereof “14.1”;

346 On page thirty, subsection 15.3, by striking out “15.2”
347 and inserting in lieu thereof “14.2”;

348 And,

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

351 §114-97-15. Penalties. Any issuer failing to comply
352 with the requirements of this rule is subject to the penalties
353 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
8 authorized.