# WEST VIRGINIA CODE CHAPTER 21A ARTICLE 2

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## §21A-2-1. Appointment; term of office.

The bureau shall be under the supervision of a commissioner of the Bureau of Employment Programs. The commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold his office subject to the will and pleasure of the Governor.

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**§21A-2-1a.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

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## §21A-2-2. Qualifications.

The commissioner shall be selected with special reference to his training, experience, and capacity.

He shall not be a candidate for or hold any other public office or trust, nor shall he be a member of a political committee. If he becomes a candidate for a public office or becomes a member of a political committee, his office as commissioner shall be immediately vacated. He shall devote his entire time to the duties of his office.

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## §21A-2-3. Oath.

The commissioner, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by article IV, section 5 of the state Constitution. The oath shall be filed with the Secretary of State.

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## §21A-2-4. Offices.

The office of the commissioner shall be located at the capitol. The commissioner shall keep his offices open at all reasonable times for the transaction of public business.

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## §21A-2-5. Traveling expenses.

The commissioner of the Bureau of Employment Programs shall receive the necessary traveling expenses incident to the performance of his or her duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the Auditor and preserved as a public record.

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**§21A-2-6. Powers and duties generally.**

The commissioner is the executive and administrative head of Workforce West Virginia and has the power and duty to:

(1) Exercise general supervision for the governance of Workforce West Virginia and propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the requirements of this chapter;

(2) Prescribe uniform rules pertaining to investigations and departmental hearings, and propose rules for promulgation;

(3) Supervise fiscal affairs and responsibilities of Workforce West Virginia;

(4) Prescribe the qualifications of, appoint, remove, and fix the compensation of, the officers and employees of Workforce West Virginia, subject to the provisions of §21A-4-10 of this code, relating to the board of review;

(5) Organize and administer Workforce West Virginia so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal law or regulation;

(6) Make reports in the form and containing information required by the United States Department of Labor and comply with any requirements that the United States Department of Labor finds necessary to assure the correctness and verification of the reports;

(7) Make available to any agency of the United States charged with the administration of public works or assistance through public employment, upon its request, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation and a statement of the recipient's rights to further compensation under this chapter;

(8) Keep an accurate and complete record of all Workforce West Virginia proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of Workforce West Virginia;

(9) Sign and execute in the name of the state, by Workforce West Virginia, any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;

(10) Prescribe a salary scale to govern compensation of appointees and employees of Workforce West Virginia;

(11) Exempt up to 200 positions of the offices of WorkForce West Virginia from the classified service of the state, the employees of which positions shall serve at the will and pleasure of the commissioner: Provided, That such exempt positions shall be in addition to those

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positions in classified and classified-exempt service under the classification plan adopted by the Division of Personnel. The Commissioner of Workforce West Virginia shall report all exemptions made under this section to the Director of the Division of Personnel as the commissioner determines necessary;

(12) Make the original determination of right in claims for benefits;

(13) Make recommendations and an annual report to the Governor concerning the condition, operation, and functioning of Workforce West Virginia;

(14) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(15) Exercise any other power necessary to standardize administration, expedite Workforce West Virginia business, assure the establishment of fair rules, and promote the efficiency of the service;

(16) Keep an accurate and complete record and prepare a monthly report of the number of persons employed and unemployed in the state. The report shall be made available upon request to members of the public and press;

(17) Provide, at Workforce West Virginia expense, a program of continuing professional, technical, and specialized instruction for the personnel of Workforce West Virginia;

(18) (A) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, under which agencies of this state shall revoke or not grant, issue, or renew any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the commissioner with regard to the administration of this chapter. The term "agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations. An employing unit is not in default if it has entered into a repayment agreement with the Unemployment Compensation Division of Workforce West Virginia and remains in compliance with its obligations under the repayment agreement;

(B) The rules shall provide that, before revoking, granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit, the designated agencies shall review a list or lists provided by Workforce West Virginia that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with Workforce West Virginia, may grant, issue, or renew the contract, license, permit, certificate, or other authority to conduct a trade, profession, or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the revocation or refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter;

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(C) The rules may be promulgated or implemented in phases so that specific agencies or specific types of contracts, licenses, permits, certificates, or other authority to conduct trades, professions, or businesses will be subject to the rules beginning on different dates. The presumptions of ownership or control contained in the Department of Environmental Protection's surface mining reclamation regulations promulgated under the provisions of §22-3-1 *et seq*. of this code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision. The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition Workforce West Virginia to be exempt from the provisions of the rules;

(19) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest, and penalties thereon and attorney's fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state; and

(20) Enter into interagency agreements to assist in exchanging information and fulfilling the provisions of this article.

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**§21A-2-6a. Reciprocal agreements.**

(1) The commissioner may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states (i) in which any part of such individual's service is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by an employing unit, and approved by the agency charged with the administration of such state's unemployment compensation law pursuant to which services performed by such individual for such employing unit are deemed to be performed entirely within such state;

(b) Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(c) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter, and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter and shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable as to all affected interests; and

(d) Contributions due under this chapter with respect to wages for insured work shall for the purposes of this chapter be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the commissioner finds will be fair and reasonable as to all affected interests.

(2) Reimbursements paid from the fund pursuant to paragraph (c) of subsection one of this section shall be deemed to be benefits for the purpose of this chapter. The commissioner is authorized to make to other states or federal agencies and to receive from such other states or federal agencies, reimbursements from or to the fund, in accordance with arrangements

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entered into pursuant to subsection one of this section.

(3) To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the Employment Security Law of this state or under a similar law of such government.

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**§21A-2-6b. Commissioner to be furnished information by State Tax Commissioner; secrecy of information; violation a misdemeanor.**

(a) Notwithstanding the provisions of any other statute in this code, specifically, but not exclusively, section five, article ten, chapter eleven of this code, the State Tax Commissioner shall deliver to the commissioner of the Bureau of Employment Programs the following information: The names, addresses and other identifying information of all business receiving a business franchise registration certificate.

(b) All information acquired by the Bureau of Employment Programs commissioner pursuant to subsection (a) of this section shall be used to implement and administer a single point of registration program as created in section seven, article twelve, chapter eleven of this code. The commissioner of the Bureau of Employment Programs, upon receiving the business franchise certificate information made available pursuant to subsection (a) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of article five of this chapter.

(c) Any officer or employee of this state who uses the aforementioned information in any manner other than the one stated herein or authorized elsewhere in this code or who divulges or makes known in any manner any of the aforementioned information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in the county jail for not more than one year, or both, together with cost of prosecution.

(d) Reasonable cost of compilation and production of any information made available pursuant to subsection (a) of this section shall be charged to the Bureau of Employment Programs.

(e) Information acquired by the Bureau of Employment Programs commissioner pursuant to subsection (a) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.

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## §21A-2-6c. Payment withholding and interception.

(a) All state, county, district and municipal officers and agents making contracts on behalf of the State of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of contracts until the receipt of a certificate from the commissioner to the effect that all payments, interest and penalties thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commissioner have been made for payment. Any official violating this subsection is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than $1,000 or confined in a county or regional jail for not more than one year, or both fined and confined.

(b) Any agency of the state, for the limited purpose of intercepting, pursuant to section sixteen, article five of this chapter and pursuant to section five-a, article two, chapter twenty-three of this code, any payment by or through the state to an employer who is in default in payment of contributions, premiums, deposits, interest or penalties under the provisions of this chapter or of chapter twenty-three of this code, shall assist the commissioner in collecting the payment that is due. For this purpose, disclosure of joint delinquency and default lists of employers with respect to unemployment compensation and workers' compensation as provided in section one-c, article one, chapter twenty-three of this code contributions, premiums, interest, deposits or penalties is authorized. The bureau and the workers' compensation commission may enter into an interagency agreement to effect the provisions of this section. The lists may be in the form of a computerized database to be accessed by the Auditor, the Department of Tax and Revenue, the Department of Administration, the Division of Highways or any other appropriate state agency or officer.

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**§21A-2-7.**

Repealed.

Acts, 1991 Reg. Sess., Ch. 16.

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## §21A-2-8. Assistants and employees.

The commissioner shall appoint, upon a nonpartisan merit basis, the division and unit heads and such assistants and employees as may be necessary to the efficient operation of the bureau. He shall fix their compensation in accordance with the provisions of article six, chapter twenty-nine of this code.

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**§21A-2-9.**

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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## §21A-2-10. Examinations and annual merit ratings.

The commissioner shall hold examinations to determine the technical and professional qualifications of applicants for positions. The examinations shall be a guide to the commissioner in making his appointments.

The commissioner shall annually rate the employees according to their merit and shall determine whether they are maintaining standards of eligibility.

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## §21A-2-11. Dismissals, terminations, layoffs and suspensions.

The commissioner shall establish regulations governing dismissals, terminations, layoffs and suspensions. Severance of employees' relationship with the bureau shall be in accordance with these regulations. All severances shall be for good cause. Failure to maintain technical or professional qualifications shall be a good cause for severance.

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## §21A-2-12. Delegation of commissioner's duties.

All powers and duties vested in the commissioner may be delegated by him to his appointees and employees; but the commissioner shall be responsible for their acts.

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## §21A-2-13. Deputies.

For the original determination of claims under this chapter, the commissioner shall appoint a necessary number of deputies as his or her representatives.

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## §21A-2-14. Head of division of employment service.

The commissioner shall appoint upon a nonpartisan merit basis the head of the division of the employment service and shall fix his salary and prescribe his duties.

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## §21A-2-15. Employment offices.

The commissioner shall establish and maintain free public employment offices in such places as necessary for the proper administration of this chapter and for the purpose of performing the duties within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended.

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**§21A-2-16. Federal-state cooperation.**

The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are accepted by the state and the state pledges its observance and compliance therewith.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such systems, and for other purposes," approved June 6, 1933, as amended: Provided, That the functions formerly performed by the advisory council under article three of this chapter, which advisory council was required under the provisions of section eleven of the Wagner-Peyser Act, shall be performed by the state job training coordinating council in accordance with section 122 (c) of the Job Training Partnership Act.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled "An act to provide for a job training program, and for other purposes," enacted October 18, 1982, as amended.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering sections sixteen and seventeen of an act of Congress entitled "An act to extend and improve the unemployment compensation program," approved September 1, 1954.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to amend Title XV of the Social Security Act to extend the unemployment insurance system to exservicemen, and for other purposes," approved August 28, 1958.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act relating to manpower requirements, resources, development, and utilization, and for other purposes," approved March 15, 1962.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to establish an effective program to alleviate conditions of substantial and persistent unemployment and under employment in certain economically distressed areas," approved May 1, 1961.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering chapter three of Title III of an act of Congress entitled "An act to promote the general welfare, foreign policy, and security of

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the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes," approved October 11, 1962.

The Bureau of Employment Programs, by its commissioner, is designated the agent of this state for the purpose of complying with and administering an act of Congress entitled "An act to provide for the establishment of a temporary program of extended unemployment compensation, to provide for a temporary increase in the rate of the federal unemployment tax, and for other purposes," approved January 3, 1961.

The Bureau of Employment Programs, by its commissioner, is also designated the agent of this state for the purpose of complying with and administering other programs of the United States government such as the foregoing.

The commissioner of the Bureau of Employment Programs is designated as the officer of this state for the purpose of complying with and administering the tasks assigned to the Bureau of Employment Programs pursuant to section six, article two-b, chapter eighteen of this code relating to the area vocational educational program of this state.

The commissioner is also authorized to apply for an advance to the unemployment compensation fund in accordance with the conditions specified in Title XII of the "Social Security Act," as amended, in order to secure to this state and its citizens the advantages available under the provisions of that title.

In the administration of this chapter the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" which relate to unemployment compensation, the "Federal Unemployment Tax Act," the "Wagner-Peyser Act," and the "Federal-State Extended Unemployment Compensation Act of 1970."

In the administration of the provisions in article six-a of this chapter, which are enacted to conform with the requirements of the "Federal-State Extended Unemployment Compensation Act of 1970," the commissioner shall take such action as may be necessary (i) to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act, and (ii) to secure this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter which are reimbursable under said federal act.

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**§21A-2-16a. Work incentive program.**

The Bureau of Employment Programs, by its commissioner, is hereby designated the sponsor or agent of the United States department of labor for the establishment and operation within the State of West Virginia of the work incentive program for recipients of aid under Part A of Title IV of the Social Security Act. Such work incentive program is provided for in Part C of said Title IV of said Social Security Act. Part C was enacted by the Ninetieth Congress in Social Security Amendments of 1967, Public Law 90-248, under Section 204 thereof.

The commissioner, on behalf of the bureau, may do any and all acts necessary to establish and operate such work incentive program within the State of West Virginia.

The commissioner is hereby empowered and authorized to enter into agreements with the secretary of labor, or his designee, for the purpose of establishing and operating said work incentive program, or any part thereof, within the State of West Virginia.

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## §21A-2-17. Acceptance of aid.

All moneys received by this state under the said act of Congress, as amended, shall be paid into the employment service account, to be expended as provided by this chapter and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, the commissioner may enter into agreements with any political subdivision of the state or with any private nonprofit organization, and as part of such an agreement the commissioner may accept money, services, or quarters as a contribution to the employment service account.

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## §21A-2-18. Legal counsel.

The Attorney General and his assistants and the prosecuting attorneys of the several counties shall render to the commissioner without additional compensation such legal services as in the discharge of his duties he shall require.

The commissioner may employ temporarily or as regular members of the department additional legal counsel. The remuneration of such counsel shall be paid from the administration fund.

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## §21A-2-19. Rules and regulations.

The commissioner may issue rules and regulations in accordance with such regular procedure as the commissioner shall prescribe.

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## §21A-2-20. Oaths and witnesses.

The commissioner and his specially authorized representatives shall have the power to administer oaths, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of papers necessary as evidence in connection with a dispute or the administration of this chapter.

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## §21A-2-21. Subpoenas.

The commissioner or his authorized representative shall have the power to issue subpoena for the production of persons and papers in all proceedings within the purview of this chapter. In case a person refuses to obey such subpoena the commissioner or his representative may invoke the aid of any circuit court in order that the testimony or evidence be produced. Upon proper showing, such court shall issue a subpoena or order requiring such persons to appear before the commissioner or his representative and produce all evidence and give all testimony touching the matter in question.

A person failing to obey such order may be punished by such court as for contempt.

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## §21A-2-22. Publications.

The commissioner shall print for public distribution:

(1) The text of this chapter;

(2) The regulations and general rules of the division; and

(3) Such other material as the commissioner deems relevant and suitable for the more effective administration of the chapter, including, for distribution to employers and organizations and associations representative of employer and employee interests, quarterly statements of the condition of the unemployment compensation trust fund and any other information relating to the administration thereof which the commissioner may deem to be pertinent and proper.

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## §21A-2-23. Veteran's training program.

(1) The Bureau of Employment Programs, by its commissioner, is hereby authorized and empowered to establish a training program for qualified veteran medical personnel and former military medical corpsmen under the "medex" training program for the training of medical assistants or any similar program.

(2) The commissioner, on behalf of the bureau, may do any and all acts necessary to establish and operate such training program within the State of West Virginia.

(3) The commissioner is hereby empowered and authorized to receive funds to finance such program from agencies of the United States government, including the department of labor, the veterans administration and the department of health, education and welfare, and from other appropriate fund sources.

(4) In order to assist in the administration of this program, the commissioner shall appoint an advisory committee consisting of not more than nine members which members shall be qualified medical professionals and shall consist of representatives of state medical departments and the state medical association. This committee shall be advisory to the commissioner and shall determine general guidelines for the development and promotion of the program.

(5) The trainee under this program shall work under the supervision of a licensed physician for a period of one year and shall receive an appropriate training allowance.

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