

# WEST VIRGINIA CODE: §47-21A-23

## §47-21A-23. Administration; rules and regulations.

(a) The commissioner shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to administer the provisions of this article. The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code, to administer the provisions of this article.

(b) The commissioner shall deny an application for any license or modification thereof if he or she finds that the issuance thereof would be in violation of the provisions of this article.

(c) The commissioner may revoke, suspend, or refuse to renew any license if the licensee or any member of a licensee organization has been convicted pursuant to §47-21A-20, §47-21A-21, or §47-21A-22 of this code, and the commissioner finds that it would be in the public interest to do so; or if the licensee has violated any of the provisions of this article: *Provided*, That before revoking or suspending any license issued under the authority of this article, the commissioner shall give at least 10 days' notice to the licensee. The notice shall be in writing, state the reason for revocation or suspension, and inform the licensee of its right to petition the Office of Tax Appeals for a hearing at which the licensee may show cause why the license should not be revoked or suspended. The notice required by this section shall be by personal or substituted service, in accordance with the West Virginia rules of civil procedure for trial courts of record, on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, present evidence in its behalf and be represented by counsel. A decision of the Office of Tax Appeals upholding in whole or in part the revoking or suspending a license is subject to judicial review as provided in §11-10A-19 of this code.

(d) The commissioner may suspend, revoke, or refuse to renew any license issued under this article for a material failure to maintain the records or file the reports required by this article if the commissioner finds that the failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to the licensee.

(e) The provisions of §29A-5-1 *et seq.* of this code apply to the denial, revocation, suspension of, or refusal to renew any license.

(g) The burden of proof in any administrative or court proceeding is on the applicant to show cause why any license should be issued or renewed and on the licensee to show cause why any license should not be revoked or suspended.

(h) Notwithstanding any other provision of this article, the commissioner may issue an emergency order suspending any license under the following circumstances and in the following manner:

- (1) An emergency order may be issued only when the commissioner believes that:
- (i) There has been a criminal violation of this article;
  - (ii) The action is necessary to prevent a criminal violation of this article; or
  - (iii) The action is necessary for the immediate preservation of the public peace, health, safety, morals, good order, or general welfare.
- (2) The emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action. This order shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.
- (3) The emergency order is effective immediately upon issuance and service upon the licensee.
- (4) Within five days after issuance of an emergency order, the licensee may petition the Office of Tax Appeals to set a time and place for a hearing where the licensee may appear and show cause why its license should not be revoked.