WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED

HOUSE BILL No. 133

(By Mr. Speaker, Mr. Speaker)

PASSED March 7, 1963

In Effect April 1, 1963

Filed in Office of the Secretary of State of West Virginia 3-15-63

JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend and reenact article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the commissioner and the department of employment security.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:


Section 1. Appointment.—The department shall be under the supervision of a commissioner of employment security. The commissioner shall be appointed by the governor, by and with the advice and consent of the sen-
ate, for a term of six years and shall hold his office sub-
ject to the will and pleasure of the governor.

Sec. 1-a. Powers and Duties Vested in Commissioner.

The powers and duties heretofore granted to the director
of employment security by chapter twenty-one-a of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, shall now be vested in the commissioner
of employment security. Wherever in this chapter or else-
where in law reference is made to the director of em-
ployment security, such reference shall henceforth be
construed and understood to mean the commissioner of
employment security.

Sec. 2. Qualifications.—The commissioner shall be
selected with special reference to his training, experi-
ence, 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.
Sec. 3. Oath.—The commissioner, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by article four, section five of the state constitution. The oath shall be filed with the secretary of state.

Sec. 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.

Sec. 5. Compensation.—Notwithstanding the provisions of section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the commissioner of employment security shall receive a yearly salary of thirteen thousand dollars and the necessary traveling expenses incident to the performance of his 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.

Sec. 6. Powers and Duties.—The commissioner shall be the executive and administrative head of the department and shall have the power and duty, to:
Exercise general supervision of and make regulations for the government of the department.

Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules and regulations.

Supervise fiscal affairs and responsibilities of the department.

Prescribe the qualifications of, appoint, remove, and fix the compensation of the officers and employees of the department, subject to the provisions of section ten, article four of this chapter, relating to the board of review.

Organize and administer the department so as to comply with the requirements of this chapter and to satisfy any conditions established in applicable federal legislation.

Make reports in such form and containing such information as the United States department of labor may from time to time require, and comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such 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 departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the department.

(9) Sign and execute in the name of the state, by "The State Department of Employment Security", 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 the department.

(11) Make the original determination of right in claims for benefits.
(12) Make recommendations, and an annual report to the governor concerning the condition, operation, and functioning of the department.

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

(14) Exercise any other power necessary to standardize administration, expedite departmental business, assure the establishment of fair rules and regulations and promote the efficiency of the service.

Sec. 6-a. 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 ad-
ministration of such state's unemployment compensation
law pursuant to which services performed by such indi-
vidual for such employing unit are deemed to be per-
formed 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 govern-
ment, 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 in-
sured 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 state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements 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.

Sec. 7. Divisions within the Department.—The commissioner shall establish within the department the division of unemployment compensation, and the division of
employment service and such other divisions as will promote efficiency and economy in administration. Each division shall be a separate administrative division with respect to personnel, budget and duties, except insofar as the commissioner may find that such separation is impracticable.

Sec. 8. Assistants and Employees.—Upon a non-partisan merit basis the commissioner shall appoint the division and unit heads, and such assistants and employees as may be necessary to the efficient operation of the department. He shall fix their compensation in accordance with the provisions of section nine of this article.

Sec. 9. Classification of Services and Compensation.—The commissioner shall by uniform regulations:

(1) Classify the different types of services to be performed for the department.

(2) Prescribe the qualifications of education, training, and experience for the appointees and employees of each class.

(3) Fix a maximum and minimum salary for each class.
Sec. 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.

Sec. 11. Dismissal, Termination, Lay-Off, Suspension.

The commissioner shall establish regulations governing dismissals, terminations, lay-offs, and suspensions. Severance of employees' relationship with the department 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.

Sec. 12. Delegation of 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.
Sec. 13. Deputies.—For the original determination of benefit claims, the commissioner shall appoint a necessary number of deputies as his representatives.

Sec. 14. State Employment Service.—The commissioner shall appoint upon a non-partisan merit basis the head of the division of the employment service and shall fix his salary and prescribe his duties.

Sec. 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 six, one thousand nine hundred thirty-three, as amended.

Sec. 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 department of employment security, 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 six, one thousand nine hundred thirty-three, as amended.

The department of employment security, 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 one, one thousand nine hundred fifty-four.

The department of employment security, 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 ex-servicemen, and for other purposes”, approved August twenty-eight, one thousand nine hundred fifty-eight.

The department of employment security, 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 fifteen, one thousand nine hundred sixty-two.

The department of employment security, 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 underemployment in certain economically distressed areas”, approved May one, one thousand nine hundred sixty-one.
The department of employment security, 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 the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes", approved October eleven, one thousand nine hundred sixty-two.

The department of employment security, 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 three, one thousand nine hundred sixty-one.

The department of employment security, 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 employment security is desig-
nated as the officer of this state for the purpose of com-
plying with and administering the tasks assigned to the
West Virginia department of employment security pur-
suant to section six, article two-b of chapter eighteen of
this code relating to the area vocational educational pro-
gram of this state.

The commissioner is also authorized, with the approval
of the advisory council, to apply for an advance to the
unemployment compensation fund in accordance with
the conditions specified in title twelve of the social
security act, as amended, in order to secure to this state
and its citizens the advantages available under the pro-
visions of that title.

Sec. 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.

Sec. 18. Legal Assistants.—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.

Sec. 19. Rules and Regulations.—The commissioner may issue rules and regulations in accordance with such regular procedure as the commissioner shall prescribe.

Sec. 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.

Sec. 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.

Sec. 22. Publication.—The commissioner shall print for public distribution:

(1) The text of this chapter.
The regulations and general rules of the division.

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

O. Roy Parker
Chairman Senate Committee

Ethel L. Sanders
Chairman House Committee

Originated in the House.

Takes effect April 6, 1963, upon passage.

Howard Hepler
Clerk of the Senate

I. A. Blankenship
Clerk of the House of Delegates

Howard J. Carson
President of the Senate

Julius W. Singleton, Jr.
Speaker House of Delegates

The within is approved this the 14th day of March, 1963.

Governor