

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963



ENROLLED

HOUSE BILL No. 133

(By Mr. Specker, Mr. Singleton)



PASSED March 7, 1963

In Effect April 1, 1963. Passage



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JOE F. BURDETT  
SECRETARY OF STATE

# 133

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(By MR. SPEAKER, MR. SINGLETON)

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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:

**Article 2. The Commissioner of Employment Security.**

**Section 1. Appointment.**—The department shall be  
2 under the supervision of a commissioner of employment  
3 security. The commissioner shall be appointed by the  
4 governor, by and with the advice and consent of the sen-

5 ate, for a term of six years and shall hold his office sub-  
6 ject to the will and pleasure of the governor.

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

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

**Sec. 2. Qualifications.**—The commissioner shall be  
2 selected with special reference to his training, experi-  
3 ence, and capacity.

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

**Sec. 3. Oath.**—The commissioner, before entering upon  
2 the duties of his office, shall take and subscribe to the  
3 oath prescribed by article four, section five of the state  
4 constitution. The oath shall be filed with the secretary  
5 of state.

**Sec. 4. Offices.**—The office of the commissioner shall  
2 be located at the capitol. The commissioner shall keep his  
3 offices open at all reasonable times for the transaction  
4 of public business.

**Sec. 5. Compensation.**—Notwithstanding the provi-  
2 sions of section two-a, article seven, chapter six of the  
3 code of West Virginia, one thousand nine hundred thirty-  
4 one, as amended, the commissioner of employment se-  
5 curity shall receive a yearly salary of thirteen thousand  
6 dollars and the necessary traveling expenses incident to  
7 the performance of his duties. Requisition for traveling  
8 expenses shall be accompanied by a sworn itemized state-  
9 ment which shall be filed with the auditor and preserved  
10 as a public record.

**Sec. 6. Powers and Duties.**—The commissioner shall  
2 be the executive and administrative head of the depart-  
3 ment and shall have the power and duty, to:

4 (1) Exercise general supervision of and make regula-  
5 tions for the government of the department.

6 (2) Prescribe uniform rules pertaining to investiga-  
7 tions, departmental hearings, and promulgate rules and  
8 regulations.

9 (3) Supervise fiscal affairs and responsibilities of the  
10 department.

11 (4) Prescribe the qualifications of, appoint, remove,  
12 and fix the compensation of the officers and employees of  
13 the department, subject to the provisions of section ten,  
14 article four of this chapter, relating to the board of re-  
15 view.

16 (5) Organize and administer the department so as to  
17 comply with the requirements of this chapter and to  
18 satisfy any conditions established in applicable federal  
19 legislation.

20 (6) Make reports in such form and containing such  
21 information as the United States department of labor may  
22 from time to time require, and comply with such provi-  
23 sions as the United States department of labor may from  
24 time to time find necessary to assure the correctness and  
25 verification of such reports.

26 (7) Make available to any agency of the United States  
27 charged with the administration of public works or as-  
28 sistance through public employment, upon its request,  
29 the name, address, ordinary occupation and employment  
30 status of each recipient of unemployment compensation,  
31 and a statement of the recipient's rights to further com-  
32 pensation under this chapter.

33 (8) Keep an accurate and complete record of all de-  
34 partmental proceedings; record and file all bonds and  
35 contracts and assume responsibility for the custody and  
36 preservation of all papers and documents of the depart-  
37 ment.

38 (9) Sign and execute in the name of the state, by "The  
39 State Department of Employment Security", any con-  
40 tract or agreement with the federal government, its  
41 agencies, other states, their subdivisions, or private per-  
42 sons.

43 (10) Prescribe a salary scale to govern compensation  
44 of appointees and employees of the department.

45 (11) Make the original determination of right in  
46 claims for benefits.

47 (12) Make recommendations, and an annual report to  
48 the governor concerning the condition, operation, and  
49 functioning of the department.

50 (13) Invoke any legal or special remedy for the  
51 enforcement of orders or the provisions of this chap-  
52 ter.

53 (14) Exercise any other power necessary to standard-  
54 ize administration, expedite departmental business, as-  
55 sure the establishment of fair rules and regulations and  
56 promote the efficiency of the service.

**Sec. 6-a. Reciprocal Agreements.**—(1) The commis-  
2 sioner may enter into reciprocal arrangements with  
3 appropriate and duly authorized agencies of other states  
4 or the federal government, or both, whereby:

5 (a) Services performed by an individual for a single  
6 employing unit for which services are customarily per-  
7 formed by such individual in more than one state shall  
8 be deemed to be services performed entirely within any  
9 one of the states (i) in which any part of such indi-  
10 vidual's service is performed or (ii) in which such indi-  
11 vidual has his residence or (iii) in which the employing

12 unit maintains a place of business, provided there is in  
13 effect, as to such services, an election by an employing  
14 unit, and approved by the agency charged with the ad-  
15 ministration of such state's unemployment compensation  
16 law pursuant to which services performed by such indi-  
17 vidual for such employing unit are deemed to be per-  
18 formed entirely within such state;

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

27 (c) Wages or services, upon the basis of which an  
28 individual may become entitled to benefits under an  
29 unemployment compensation law of another state or of  
30 the federal government, shall be deemed to be wages  
31 for insured work for the purpose of determining his  
32 rights to benefits under this chapter, and wages for in-

33 sured work, on the basis of which an individual may be-  
34 come entitled to benefits under this chapter and shall be  
35 deemed to be wages or services on the basis of which  
36 unemployment compensation under such law of another  
37 state or of the federal government is payable, but no  
38 such arrangement shall be entered into unless it contains  
39 provisions for reimbursements to the fund for such of the  
40 benefits paid under this chapter upon the basis of such  
41 wages or services, and provisions for reimbursements  
42 from the fund for such of the compensation paid under  
43 such other law upon the basis of wages for insured work,  
44 as the commissioner finds will be fair and reasonable as  
45 to all affected interests; and

46 (d) Contributions due under this chapter with respect  
47 to wages for insured work shall for the purposes of this  
48 chapter be deemed to have been paid to the fund as of  
49 the date payment was made as contributions therefor  
50 under another state or federal unemployment compen-  
51 sation law, but no such arrangement shall be entered  
52 into unless it contains provisions for such reimbursement  
53 to the fund of such contributions as the commissioner

54 finds will be fair and reasonable as to all affected inter-  
55 ests.

56 (2) Reimbursements paid from the fund pursuant to  
57 paragraph (c) of subsection one of this section shall be  
58 deemed to be benefits for the purpose of this chapter.  
59 The commissioner is authorized to make to other state or  
60 federal agencies and to receive from such other state or  
61 federal agencies, reimbursements from or to the fund,  
62 in accordance with arrangements entered into pursuant to  
63 subsection one of this section.

64 (3) To the extent permissible under the laws and  
65 constitution of the United States, the commissioner is  
66 authorized to enter into or cooperate in arrangements  
67 whereby facilities and services provided under this chap-  
68 ter and facilities and services provided under the un-  
69 employment compensation law of any foreign govern-  
70 ment, may be utilized for the taking of claims and the  
71 payment of benefits under the employment security law  
72 of this state or under a similar law of such government.

**Sec. 7. Divisions within the Department.**—The com-  
2 missioner shall establish within the department the divi-  
3 sion of unemployment compensation, and the division of

4 employment service and such other divisions as will pro-  
5 mote efficiency and economy in administration. Each  
6 division shall be a separate administrative division with  
7 respect to personnel, budget and duties, except insofar  
8 as the commissioner may find that such separation is  
9 impracticable.

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

**Sec. 9. Classification of Services and Compensation.**—  
2 The commissioner shall by uniform regulations:  
3 (1) Classify the different types of services to be per-  
4 formed for the department.  
5 (2) Prescribe the qualifications of education, training,  
6 and experience for the appointees and employees of each  
7 class.  
8 (3) Fix a maximum and minimum salary for each  
9 class.

**Sec. 10. Examinations and Annual Merit Ratings.—**

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

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

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

2 —The commissioner shall establish regulations governing  
3 dismissals, terminations, lay-offs, and suspensions. Sever-  
4 ance of employees' relationship with the department shall  
5 be in accordance with these regulations. All severances  
6 shall be for good cause. Failure to maintain technical  
7 or professional qualifications shall be a good cause for  
8 severance.

**Sec. 12. Delegation of Duties.—**All powers and duties

2 vested in the commissioner may be delegated by him to  
3 his appointees and employees; but the commissioner shall  
4 be responsible for their acts.

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

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

**Sec. 15. Employment Offices.**—The commissioner shall  
2 establish and maintain free public employment offices  
3 in such places as necessary for the proper administration  
4 of this chapter and for the purpose of performing the  
5 duties within the purview of the act of Congress entitled  
6 “An act to provide for the establishment of a national  
7 employment system and for cooperation with states in  
8 the promotion of such system, and for other purposes”,  
9 approved June six, one thousand nine hundred thirty-  
10 three, as amended.

**Sec. 16. Federal-State Cooperation.**—The commissioner  
2 shall have all powers and duties necessary to secure to  
3 the state the benefits of congressional action for the  
4 promotion and maintenance of a system of public em-  
5 ployment offices. To this end the provisions of the act

6 referred to in the preceding section and such additional  
7 congressional action consistent with the above act are  
8 accepted by the state and the state pledges its observance  
9 and compliance therewith.

10 The department of employment security, by its com-  
11 missioner, is designated the agent of this state for the  
12 purpose of compliance with the act of Congress entitled  
13 "An act to provide for the establishment of a national  
14 employment system and for cooperation with states in  
15 the promotion of such systems, and for other purposes",  
16 approved June six, one thousand nine hundred thirty-  
17 three, as amended.

18 The department of employment security, by its com-  
19 missioner, is designated the agent of this state for the  
20 purpose of complying with and administering sections  
21 sixteen and seventeen of an act of Congress entitled, "An  
22 act to extend and improve the unemployment compensa-  
23 tion program," approved September one, one thousand  
24 nine hundred fifty-four.

25 The department of employment security, by its com-  
26 missioner, is designated the agent of this state for the

27 purpose of complying with and administering an act of  
28 Congress entitled, "An act to amend title XV of the  
29 Social Security Act to extend the unemployment insur-  
30 ance system to ex-servicemen, and for other purposes",  
31 approved August twenty-eight, one thousand nine hun-  
32 dred fifty-eight.

33 The department of employment security, by its com-  
34 missioner, is designated the agent of this state for the  
35 purpose of complying with and administering an act of  
36 Congress entitled, "An act relating to manpower require-  
37 ments, resources, development, and utilization, and for  
38 other purposes", approved March fifteen, one thousand  
39 nine hundred sixty-two.

40 The department of employment security, by its com-  
41 missioner, is designated the agent of this state for the  
42 purpose of complying with and administering an act of  
43 Congress entitled, "An act to establish an effective pro-  
44 gram to alleviate conditions of substantial and persistent  
45 unemployment and underemployment in certain economi-  
46 cally distressed areas", approved May one, one thousand  
47 nine hundred sixty-one.

48 The department of employment security, by its com-  
49 missioner, is designated the agent of this state for the  
50 purpose of complying with and administering chapter  
51 three of title III of an act of Congress entitled, "An act  
52 to promote the general welfare, foreign policy, and  
53 security of the United States through international trade  
54 agreements and through adjustment assistance to domes-  
55 tic industry, agriculture, and labor, and for other pur-  
56 poses", approved October eleven, one thousand nine hun-  
57 dred sixty-two.

58 The department of employment security, by its com-  
59 missioner, is designated the agent of this state for the  
60 purpose of complying with and administering an act of  
61 Congress entitled, "An act to provide for the establish-  
62 ment of a temporary program of extended unemployment  
63 compensation, to provide for a temporary increase in the  
64 rate of the federal unemployment tax, and for other  
65 purposes," approved January three, one thousand nine  
66 hundred sixty-one.

67 The department of employment security, by its com-  
68 missioner, is also designated the agent of this state for

69 the purpose of complying with and administering other  
70 programs of the United States government such as the  
71 foregoing.

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

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

**Sec. 17. Acceptance of Aid.**—All moneys received by  
2 this state under the said act of Congress, as amended,  
3 shall be paid into the employment service account, to  
4 be expended as provided by this chapter and by said

5 act of Congress. For the purpose of establishing and  
6 maintaining free public employment offices, the com-  
7 missioner may enter into agreements with any political  
8 subdivision of the state or with any private nonprofit  
9 organization, and as part of such an agreement the com-  
10 missioner may accept money, services, or quarters as a  
11 contribution to the employment service account.

**Sec. 18. Legal Assistants.**—The attorney general and  
2 his assistants and the prosecuting attorneys of the several  
3 counties shall render to the commissioner without addi-  
4 tional compensation such legal services as in the dis-  
5 charge of his duties he shall require.

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

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

**Sec. 20. Oaths and Witnesses.**—The commissioner and  
2 his specially authorized representatives shall have the

3 power to administer oaths, take depositions, certify offi-  
4 cial acts, and issue subpoenas to compel the attendance  
5 of witnesses and production of papers necessary as evi-  
6 dence in connection with a dispute or the administration  
7 of this chapter.

**Sec. 21. Subpoenas.**—The commissioner or his author-  
2 ized representative shall have the power to issue subpoena  
3 for the production of persons and papers in all proceed-  
4 ings within the purview of this chapter. In case a person  
5 refuses to obey such subpoena the commissioner or his  
6 representative may invoke the aid of any circuit court in  
7 order that the testimony or evidence be produced. Upon  
8 proper showing, such court shall issue a subpoena or order  
9 requiring such persons to appear before the commissioner  
10 or his representative and produce all evidence and give  
11 all testimony touching the matter in question.

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

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

3 (1) The text of this chapter.

- 4     ~~(2)~~ The regulations and general rules of the division.
- 5     (3) Such other material as the commissioner deems
- 6 relevant and suitable for the more effective administra-
- 7 tion of the chapter, including, for distribution to em-
- 8 ployers and organizations and associations representative
- 9 of employer and employee interests, quarterly statements
- 10 of the condition of the unemployment compensation trust
- 11 fund and any other information relating to the adminis-
- 12 tration thereof which the commissioner may deem to be
- 13 pertinent and proper.

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

O. Ray Parker  
Chairman Senate Committee

Edith L. Crandall  
Chairman House Committee

Originated in the House.

Takes effect April 1, 1963 ~~\_\_\_\_\_~~ passage.

Howard Meyer  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Howard W. Carson  
President of the Senate

Julius W. Sigleton Jr.  
Speaker House of Delegates

The within approved this the 14<sup>th</sup>  
day of March, 1963.

W. W. Barron  
Governor

