

ARTICLE 19. DONATION OF EYES

- § 1409(125). [1] Right of disposition.
1409(126). [2] Manner of disposition.
1409(127). [3] Donees.

§ 1409(125). [1] **Right of Disposition.**—The Legislature finds and declares that a person has the right to direct the manner in which his eyes, or any part thereof, shall be disposed of after his death.

§ 1409(126). [2] **Manner of Disposition.**—A person twenty-one or more years of age and of sound mind may prescribe by written instrument for the disposition to be made, after his death, of his eyes or any part thereof, if such person shall receive no remuneration or other thing of value for such disposition and it is for the purpose of advancing medical science or for the replacement or rehabilitation of diseased eyes or worn out or injured parts of the eyes of living human beings. The person or persons having the right to a body for burial may likewise so consent to such use of the eyes or parts thereof. Notwithstanding any provision of chapter forty-one of this code, any such donation, authorization or consent may be by dated written instrument signed by the person making or giving the same and witnessed by two persons of legal age.

§ 1409(127). [3] **Donees.**—No particular form or words shall be necessary or required for such donation or authorization: Provided, that the instrument conveys the clear intention of the purpose of the person making the same. Any such disposition of his own eyes or parts thereof may be revoked by the donor at any time prior to his death by the execution of a written instrument in the same manner as the original grant.

Each instrument may designate the donee, but such designation shall not be necessary to its validity. A donee may be an individual, hospital, institution, an agency engaged in sight restoration or a bank maintained for the storage, preservation and use of human eyes or parts thereof. If no specific donee is named in such instrument, then the hospital in which the donor dies shall be considered to be the donee, and if such donor does not die in a hospital, then the attending physician shall be considered to be the donee; such hospital or physician shall have full authority to take and remove said eyes or parts thereof which such donor has designated and to make the same available to any person or institution in need thereof. Where a donee is named in such instrument, any hospital or physician acquiring possession or custody of the body shall have the authority to remove from the body the eyes or parts thereof which the donor has designated and to deliver the same to the named donee: Provided, however, that no one shall receive any remuneration or other thing of value whatsoever, except the established fees, for the rendition of such services, for any eyes or parts thereof donated under the provisions of this act, and that no claim for services in removing the eyes or parts thereof shall be a claim against the estate of the deceased. No hospital, donee or physician, who reasonably relies upon a dispositive instrument appearing to have been made in conformity with the provisions of this article, shall be liable civilly or criminally for removing eyes or parts thereof from the body of a deceased donor. No court order or appointment of a fiduciary for the estate of the deceased shall be necessary before the removal of said eyes or parts thereof.

organic or inorganic) in a locality, manner and amount as to be unreasonably and materially injurious to human, animal or plant life or to property.

§ 1409(130). [3] **Making it Unlawful to Cause Statutory Air Pollution.**—For the purposes of this article and subject to all of the provisions hereof, it shall be unlawful for any person to cause a statutory air pollution as herein defined: Provided, however, that nothing contained in this article shall be construed to provide any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

§ 1409(131). [4] **Creation of Air Pollution Control Commission; Personnel; Records.**—There is hereby created, as an agency of this state, an air pollution control commission which shall consist of five members, including the state director of health and the commissioner of agriculture, who shall be members ex officio, and three other members who shall be appointed by the governor, with the advice and consent of the senate, at least two of whom shall be truly representative of industries engaged in business in this state. The term of office of the three members of the commission to be appointed by the governor shall be four years, except that the first members to be so appointed under the provisions of this article shall take office immediately and their terms shall be two, three and four years, respectively, from July first, one thousand nine hundred sixty-one. All members appointed by the governor shall serve until their respective successors are appointed and shall have qualified, and any vacancy in such membership occurring by expiration of term or otherwise shall be filled by the governor with the advice and consent of the senate.

The members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purposes, for actual and necessary expenses incurred in the performance of their duties as such.

At its first meeting the commission shall elect from its membership a chairman and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall appoint a secretary who need not be a member of the commission. The commission shall employ such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

The commission may establish rules for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two commissioners, all of which

meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission.

§ 1409(132). [5] **Authority and Powers of Commission; Rules and Regulations; Public Hearings.**—The commission is hereby authorized and empowered;

(1) To develop ways and means for the regulation and control of pollution of the air of the states;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary.

(4) To adopt and to promulgate reasonable regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, however, that no rule or regulation of the commission shall specify the design of equipment, type of construction, or particular method which a person shall use to reduce the discharge of air pollutants, nor shall any such rule or regulation apply to any aspect of an employer-employee relationship;

(5) To enter orders requiring compliance with the provisions of this article and the regulations lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of regulations and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state.

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this article;

(9) To enter at reasonable times upon any private or public property for the purpose of investigating an alleged statutory air pollution: Provided, however, that no such investigation shall extend to information relating to secret processes or methods of manufacturing or production;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution; and

(13) The commission may appoint technical advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members for each area so designated, at least two of whom shall be truly representative of industries operating within such area, and may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area.

No rule or regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published once a week for two successive weeks in at least one daily newspaper of general circulation in the county wherein such hearing is to be held. Full opportunity to be heard shall be accorded to all persons in attendance and any person, whether or not in attendance at such hearing, may submit in writing his views with respect to any such rule or regulation to the commission within thirty days after such hearing. The proceedings at the hearing before the commission shall be recorded by mechanical means or otherwise as may be prescribed by the commission. Such record of proceedings need not be transcribed unless requested by an interested party in which event the prevailing rates for such transcripts will be required from such interested party. The commission may, in its discretion, solicit the comments in writing of any person who may be affected by or interested in such proposed rules and regulations.

§ 1409(133). [6] Complaints Before The Commission and Procedure Thereon.—If, from any investigation made by it or from any complaint filed before it, the commission shall be of the opinion that there is sufficient cause to believe that a person may be violating the provisions of this article, the commission may give written notice to such person to appear before the commission at a time and place, within the county wherein the pollution is alleged to have originated, to be specified in such notice, then and there to show cause, if any shall exist, why said commission should not enter an order finding that such person has violated the provisions of this article and regulating or controlling the alleged pollution. The said notice shall with reasonable particularity specify the nature of the alleged air pollution which is to be the subject of inquiry at such hearing. No such hearing shall be held less than thirty days from the date of said notice. Any such notice may be served and returned in the same manner as a summons in a civil action or may be served by sending a copy thereof by registered mail addressed to the person or persons alleged to be causing such pollution at his and/or its usual, or last known, post office address. Any person to whom such notice has been given may appear in person or by counsel at the hearing and adduce evidence in answer to the alleged violation.

In any proceeding under this article the commission shall consider all pertinent factors, including a balancing of the conflicting interests and equities involved, the availability and practicality of control devices, the physical and economic feasibility of eliminating, controlling or reducing the alleged pollution, the nature of the locality affected by the alleged pollution, the

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th the evidence adduced at the hearing and a consideration factors, the commission shall enter such order as in its opinion ste the declared policy of this article. Such order shall condidings of fact with respect to all factors considered by the d shall require that the statutory air pollution, if any be cted within a reasonable period of time to be fixed therein. : such order shall be promptly served, either by service as a ivil action or by registered mail as aforesaid, upon all persons fected by such order. Within twenty days after service of y person substantially affected thereby may file with the e commission a petition in writing requesting the commission acate such order. The petition shall assign the grounds relied petitioner in support of a modification or vacation of such mmission shall thereupon reconsider its original order and wenty days after the filing of the petition, enter of record firming, modifying or vacating the original order. A true order shall be promptly served upon all persons substantially y in the same manner as the original order was served. Any commission entered hereunder shall become final and con- all persons affected thereby unless an appeal therefrom is nanner provided in section seven of this article.

tings at any such hearing shall be recorded by mechanical erwise as may be prescribed by the commission: Provided, the proceedings shall be taken by a stenographer appointed sion upon demand of any interested person. A copy of such l be furnished on demand to any person substantially affected t of the fee prescribed therefor in the rules and regulations ssion, such fee not to exceed that prescribed for transcripts in ert.

4). [7] **Right of Appeal; Jurisdiction of Court.**—Any person t shall have been substantially affected by an order of the ay appeal from such order or decision by filing with the com- itten notice of appeal. Such notice shall be filed within thirty e date notice of the order or decision of the commission was t person and shall be signed by him or his attorney. Within rom the receipt of the notice of appeal, the commission shall forward to the appellant or his attorney a copy of a full the proceedings, together with a copy of the order or decision ission and a copy of the notice of appeal, and at the same le a transcript of the proceedings before the commission and uments mentioned above with the clerk of the circuit court ated. All documents shall be duly certified by the secretary ssion. The court shall thereafter have complete jurisdiction of

l shall be taken to the circuit court of the county wherein the tory air pollution complained of originated. The circuit court

to which any such appeal shall have been taken, or the judge thereof, shall fix a time for the hearing of the appeal and shall, after such hearing, without a jury, by order entered of record, affirm, modify or set aside in whole or in part the order of the commission. The said court shall make findings of fact and conclusions of law based upon the transcript of the proceedings before the commission and upon any additional evidence adduced before said court, the right to adduce such additional evidence being hereby reserved to the commission or to any person substantially affected by the order of the commission. In the event the circuit court shall affirm or modify the commission's order that a statutory air pollution exists under the provisions of this article, the order of the court shall specify that such pollution shall be corrected within a reasonable period of time to be fixed therein. The commission or any person whose interests shall have been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

An appeal to a circuit court or to the supreme court of appeals shall serve to stay the order of the commission or circuit court, as the case may be, pending final determination thereof.

§ 1409(135). [8] **Penalties.**—(a) Any person who shall fail or refuse to comply with any lawful order of the commission to correct a statutory air pollution within the time fixed by such order or any extension of time granted by the commission shall be subject to a penalty of not more than one hundred dollars for each day that such failure or refusal continues after such time has expired, which penalty may be recovered in a civil action brought by the commission in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of. The amount of the penalty shall be fixed by the court without a jury. The amount of any such penalties collected by the commission shall be deposited in the general fund of the state treasury according to law. Upon a request in writing from the commission, it shall be the duty of the prosecuting attorney of the county in which any such action for penalties accruing under this section may be brought to institute and prosecute all such actions on behalf of the commission.

(b) For the purpose of this section, violations on separate days shall be considered separate offenses.

§ 1409(136). [9] **Applications for Injunctive Relief.**—In addition to the remedy provided for in section eight of this article and in the absence of reasonable progress toward correction of the statutory air pollution, the commission may request the prosecuting attorney of the county in which the defendant resides or is engaged in the activity complained of to apply to the circuit court of such county for an injunction to restrain all violations of any final order of the commission entered pursuant to section six of this article.

§ 1409(137). [10] **Emergencies; Powers of Commission; Procedure.**—Whenever air pollution conditions in any area of the state become such as, in the opinion of the commission, to create an emergency and to require immediate action for the protection of the public health, the commission

may, with the written approval of the governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the commission shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the commission shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the commission may thereafter apply by petition to the circuit court of the county for a review of the commission's action. The circuit court shall forthwith fix a time for a hearing de novo upon the petition and shall, after such hearing, by order entered of record affirm, modify or set aside in whole or in part the order and action of the commission. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the supreme court of appeals in the manner prescribed by law.

§ 1409(138). [11] **Powers Reserved to State Board of Health, Local Health Boards and Political Subdivisions; Conflicting Statutes Repealed.**—Nothing in this article shall affect or limit the powers or duties heretofore conferred by the provisions of this chapter upon the state board of health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise be hereafter deemed to apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise be deemed to apply to the control, reduction or abatement of air pollution, hereby repealed: Provided, however, that no ordinance heretofore adopted by any municipality relating to the control, reduction or abatement of air pollution shall be deemed repealed by this article.

§ 1409(139). [12] **Severability.**—The provisions of this act are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the act or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such invalid or unconstitutional provision, section or part had not been included therein.

§ 1409(140). [13] **Effective Date of Rules and Regulations.**—The rules and regulations promulgated pursuant to the provisions of this article shall be of no effect until one (1) year after the effective date of this article.

N. H. DYER, M.D., M.P.H.
STATE DIRECTOR OF HEALTH



State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

November 28, 1967

Honorable Robert D. Bailey
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Bailey:

Enclosed are two copies of a Reference Page and two copies of Index Pages for The Public Health Laws of West Virginia and a Manual of Regulations of the West Virginia Board of Health. These Laws and Regulations are filed in the Odd Size File as item number 3.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "N. H. Dyer".

N. H. Dyer, M. D., M. P. H.
State Director of Health

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 11/28/67