

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1961

**ENROLLED**

SENATE BILL NO. 76

(By Mr. Moreland)

PASSED March 8th 1961

In Effect March 14, 1961 Passage

Filed in Office of the Secretary of State  
of West Virginia March 14, 1961  
JOE F. BURDETT  
SECRETARY OF STATE

**ENROLLED**

**Senate Bill No. 76**

(By MR. MORELAND)

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[Passed March 8, 1961; in effect ninety days from passage.]

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AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article nineteen, relating to air pollution control; creating an air pollution control commission and defining its powers and duties; defining what shall constitute the pollution of air in violation of the provisions of this article; providing for procedures before the commission; providing penalties and remedies for violations; providing for emergency powers of the commission; and repealing statutes or parts of statutes inconsistent with the provisions of this article.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article designated article nineteen, to read as follows:

**Article 19. Air Pollution Control.**

Section 1. *Declaration of Policy and Purpose.*—It is  
2 hereby determined and declared to be the policy of the  
3 state of West Virginia to maintain such a reasonable de-  
4 gree of purity of the air resources of the state as shall be  
5 technically feasible, economically reasonable, and neces-  
6 sary for the protection of the normal health, the general  
7 welfare and the property of the people of the state. The  
8 measures for the accomplishment of this purpose shall  
9 not unreasonably obstruct the attraction, development  
10 and expansion of business, industry and commerce within  
11 the state. The program for the control of air pollution  
12 under this act shall be sought to be accomplished by a  
13 maximum of cooperation and conciliation among all the  
14 parties concerned. All powers herein conferred upon the

15 air pollution control commission shall be exercised solely  
16 to effectuate the policy declared in this section.

Sec. 2. *Definitions.*—The terms used in this article are  
2 defined as follows:

3 The term “person” shall mean any and all persons,  
4 natural or artificial, including any municipal, public or  
5 private corporation organized or existing under the laws  
6 of this or any other state or county, and any firm, partner-  
7 ship or association of whatever nature.

8 The term “commission” shall mean the air pollution  
9 control commission herein created, and the term “commis-  
10 sioner” shall mean a member of said commission.

11 The term “air pollutants” shall mean solids, liquids or  
12 gases which, if discharged into the air, will result in a  
13 statutory air pollution.

14 The term “discharge” shall refer to any continuous or  
15 regular release, escape or emission of air pollutants into  
16 the air.

17 The term “statutory air pollution” shall mean and be  
18 limited to the discharge into the air by the act of man of  
19 substances (liquid, solid, gaseous, organic or inorganic)

20 in a locality, manner and amount as to be unreasonably  
21 and materially injurious to human, animal or plant life  
22 or to property.

Sec. 3. *Making it Unlawful to Cause Statutory Air*  
2 *Pollution.*—For the purposes of this article and subject to  
3 all of the provisions hereof, it shall be unlawful for any  
4 person to cause a statutory air pollution as herein defined:  
5 *Provided, however,* That nothing contained in this article  
6 shall be construed to provide any person with a legal  
7 remedy or basis for damages or other relief not otherwise  
8 available to such person immediately prior to enactment  
9 of this article.

Sec. 4. *Creation of Air Pollution Control Commission;*  
2 *Personnel; Records.*—There is hereby created, as an  
3 agency of this state, an air pollution control commission  
4 which shall consist of five members, including the state  
5 director of health and the commissioner of agriculture,  
6 who shall be members ex officio, and three other members  
7 who shall be appointed by the governor, with the advice  
8 and consent of the senate, at least two of whom shall be  
9 truly representative of industries engaged in business in

10 this state. The term of office of the three members of the  
11 commission to be appointed by the governor shall be four  
12 years, except that the first members to be so appointed  
13 under the provisions of this article shall take office im-  
14 mediately and their terms shall be two, three and four  
15 years, respectively, from July first, one thousand nine  
16 hundred sixty-one. All members appointed by the gov-  
17 ernor shall serve until their respective successors are ap-  
18 pointed and shall have qualified. and any vacancy in such  
19 membership occurring by expiration of term or otherwise  
20 shall be filled by the governor with the advice and consent  
21 of the senate.

22 The members of the commission shall receive no salary  
23 or remuneration for their services as such but they shall  
24 be reimbursed, out of moneys appropriated for such pur-  
25 poses, for actual and necessary expenses incurred in the  
26 performance of their duties as such.

27 At its first meeting the commission shall elect from its  
28 membership a chairman and at the first meeting in each  
29 fiscal year thereafter the commission shall elect from its  
30 membership a chairman to act during such fiscal year.

31 At similar times the commission shall appoint a secretary  
32 who need not be a member of the commission. The com-  
33 mission shall employ such personnel as may be required,  
34 whose duties shall be defined by the commission and  
35 whose compensation, to be fixed by the commission, shall  
36 be paid out of the state treasury, upon the requisition of  
37 the commission, from moneys appropriated for such pur-  
38 poses.

39 The commission may establish rules for the regulation  
40 of its affairs and the conduct of all proceedings before it.  
41 All proceedings of the commission shall be entered in a  
42 permanently bound record book, properly indexed, and  
43 the same shall be carefully preserved. Copies of orders  
44 entered by the commission, as well as copies of papers or  
45 documents filed with it or the records of proceedings be-  
46 fore the commission, shall be attested by the secretary  
47 of the commission. The commission shall meet at such  
48 times and places as may be agreed upon by the commis-  
49 sioners, or upon the call of the chairman of the commis-  
50 sion or any two commissioners, all of which meetings  
51 shall be general meetings for the consideration of any and

52 all matters which may properly come before the com-  
53 mission.

Sec. 5. *Authority and Powers of Commission; Rules and  
2 Regulations; Public Hearings.*—The commission is hereby  
3 authorized and empowered:

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

6 (2) To advise, consult and cooperate with other agen-  
7 cies of the state, political subdivisions of the state, other  
8 states, agencies of the federal government, industries,  
9 and with affected groups in furtherance of the declared  
10 purposes of this article;

11 (3) To encourage and conduct such studies and re-  
12 search relating to air pollution and its control and abate-  
13 ment as the commission may deem advisable and neces-  
14 sary.

15 (4) To adopt and to promulgate reasonable regulations.  
16 not inconsistent with the provisions of this article, re-  
17 lating to the control of air pollution: *Provided, however,*  
18 that no rule or regulation of the commission shall specify  
19 the design of equipment, type of construction, or par-

20 ticular method which a person shall use to reduce the  
21 discharge of air pollutants, nor shall any such rule or  
22 regulation apply to any aspect of an employer-employee  
23 relationship;

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

27 (6) To consider complaints, subpoena witnesses, ad-  
28 minister oaths, make investigations, and hold hearings  
29 relevant to the promulgation of regulations and the entry  
30 of compliance orders hereunder;

31 (7) To encourage voluntary cooperation by munici-  
32 palities, counties, industries and others in preserving the  
33 purity of the air within the state;

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

38 (9) To enter at reasonable times upon any private or  
39 public property for the purpose of investigating an alleged  
40 statutory air pollution: *Provided, however,* That no such

41 investigation shall extend to information relating to secret  
42 processes or methods of manufacturing or production;

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

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

50 (12) To represent the state in any and all matters per-  
51 taining to plans, procedures and negotiations for interstate  
52 compacts in relation to the control of air pollution; and

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

62 No rule or regulation of the commission pertaining to  
63 the control, reduction or abatement of air pollution shall  
64 become effective until after at least one public hearing  
65 thereon shall have been held by the commission within  
66 the state. Notice to the public of the time and place of  
67 any such hearing shall be given by the commission at  
68 least thirty days prior to the scheduled date of such hear-  
69 ing by advertisement published once a week for two  
70 successive weeks in at least one daily newspaper of gen-  
71 eral circulation in the county wherein such hearing is to  
72 be held. Full opportunity to be heard shall be accorded  
73 to all persons in attendance and any person, whether or  
74 not in attendance at such hearing, may submit in writing  
75 his views with respect to any such rule or regulation to the  
76 commission within thirty days after such hearing. The  
77 proceedings at the hearing before the commission shall  
78 be recorded by mechanical means or otherwise as may  
79 be prescribed by the commission. Such record of proceed-  
80 ings need not be transcribed unless requested by an inter-  
81 ested party in which event the prevailing rates for such  
82 transcripts will be required from such interested party.

83 The commission may, in its discretion, solicit the com-  
84 ments in writing of any person who may be affected by or  
85 interested in such proposed rules and regulations.

Sec. 6. *Complaints Before The Commission and Pro-*  
2 *cedure Thereon.*—If, from any investigation made by it  
3 or from any complaint filed before it, the commission shall  
4 be of the opinion that there is sufficient cause to believe  
5 that a person may be violating the provisions of this arti-  
6 cle, the commission may give written notice to such person  
7 to appear before the commission at a time and place,  
8 within the county wherein the pollution is alleged to have  
9 originated, to be specified in such notice, then and there  
10 to show cause, if any shall exist, why said commission  
11 should not enter an order finding that such person has vio-  
12 lated the provisions of this article and regulating or con-  
13 trolling the alleged pollution. The said notice shall with  
14 reasonable particularity specify the nature of the alleged  
15 air pollution which is to be the subject of inquiry at such  
16 hearing. No such hearing shall be held less than thirty  
17 days from the date of said notice. Any such notice may be  
18 served and returned in the same manner as a summons in

19 a civil action or may be served by sending a copy thereof  
20 by registered mail addressed to the person or persons  
21 alleged to be causing such pollution at his and/or its usual,  
22 or last known, post office address. Any person to whom  
23 such notice has been given may appear in person or by  
24 counsel at the hearing and adduce evidence in answer to  
25 the alleged violation.

26 In any proceeding under this article the commission  
27 shall consider all pertinent factors, including a balancing  
28 of the conflicting interests and equities involved, the  
29 availability and practicality of control devices, the phy-  
30 sical and economic feasibility of eliminating, controlling  
31 or reducing the alleged pollution, the nature of the lo-  
32 cality affected by the alleged pollution, the reasonableness  
33 of existing conditions and such other factors as may ap-  
34 pear to the commission to be consonant with the policy  
35 declared in section one of this article.

36 Consistent with the evidence adduced at the hearing  
37 and a consideration of the aforesaid factors, the commis-  
38 sion shall enter such order as in its opinion will best pro-  
39 mote the declared policy of this article. Such order shall

40 contain specific findings of fact with respect to all factors  
41 considered by the commission and shall require that the  
42 statutory air pollution, if any be found, be corrected with-  
43 in a reasonable period of time to be fixed therein. A true  
44 copy of such order shall be promptly served, either by  
45 service as a summons in a civil action or by registered mail  
46 as aforesaid, upon all persons substantially affected by  
47 such order. Within twenty days after service of such  
48 order, any person substantially affected thereby may file  
49 with the secretary of the commission a petition in writing  
50 requesting the commission to modify or vacate such order.  
51 The petition shall assign the grounds relied upon by the  
52 petitioner in support of a modification or vacation of such  
53 order. The commission shall thereupon reconsider its  
54 original order and shall, within twenty days after the  
55 filing of the petition, enter of record an order confirming,  
56 modifying or vacating the original order. A true copy of  
57 such order shall be promptly served upon all persons sub-  
58 stantially affected thereby in the same manner as the  
59 original order was served. Any order of the commission  
60 entered hereunder shall become final and conclusive upon

61 all persons affected thereby unless an appeal therefrom is  
62 taken in the manner provided in section seven of this  
63 article.

64 The proceedings at any such hearing shall be recorded  
65 by mechanical means or otherwise as may be prescribed  
66 by the commission: *Provided, however,* That the pro-  
67 ceedings shall be taken by a stenographer appointed by  
68 the commission upon demand of any interested person. A  
69 copy of such transcript shall be furnished on demand to  
70 any person substantially affected upon payment of the fee  
71 prescribed therefor in the rules and regulations of the  
72 commission, such fee not to exceed that prescribed for  
73 transcripts in the circuit court.

Sec. 7. *Right of Appeal; Jurisdiction of Court.*—Any  
2 person whose interest shall have been substantially af-  
3 fected by an order of the commission may appeal from  
4 such order or decision by filing with the commission a  
5 written notice of appeal. Such notice shall be filed within  
6 thirty days from the date notice of the order or decision  
7 of the commission was given to such person and shall be  
8 signed by him or his attorney. Within thirty days from

9 the receipt of the notice of appeal, the commission shall  
10 prepare and forward to the appellant or his attorney a  
11 copy of a full transcript of the proceedings, together with  
12 a copy of the order or decision of the commission and a  
13 copy of the notice of appeal, and at the same time shall  
14 file a transcript of the proceedings before the commission  
15 and the other documents mentioned above with the clerk  
16 of the circuit court herein designated. All documents  
17 shall be duly certified by the secretary of the commission.  
18 The court shall thereafter have complete jurisdiction of  
19 the matter.

20 The appeal shall be taken to the circuit court of the  
21 county wherein the alleged statutory air pollution com-  
22 plained of originated. The circuit court to which any such  
23 appeal shall have been taken, or the judge thereof, shall  
24 fix a time for the hearing of the appeal and shall, after  
25 such hearing, without a jury, by order entered of record,  
26 affirm, modify or set aside in whole or in part the order of  
27 the commission. The said court shall make findings of  
28 fact and conclusions of law based upon the transcript of  
29 the proceedings before the commission and upon any addi-

30 tional evidence adduced before said court, the right to  
31 adduce such additional evidence being hereby reserved  
32 to the commission or to any person substantially affected  
33 by the order of the commission. In the event the circuit  
34 court shall affirm or modify the commission's order that  
35 a statutory air pollution exists under the provisions of  
36 this article, the order of the court shall specify that such  
37 pollution shall be corrected within a reasonable period of  
38 time to be fixed therein. The commission or any person  
39 whose interests shall have been substantially affected by  
40 the final order of the circuit court may appeal to the su-  
41 preme court of appeals in the manner prescribed by  
42 law.

43 An appeal to a circuit court or to the supreme court of  
44 appeals shall serve to stay the order of the commission or  
45 circuit court, as the case may be, pending final determi-  
46 nation thereof.

Sec. 8. *Penalties.*—(a) Any person who shall fail or re-  
2 fuse to comply with any lawful order of the commission to  
3 correct a statutory air pollution within the time fixed by  
4 such order or any extension of time granted by the com-

5 mission shall be subject to a penalty of not more than one  
6 hundred dollars for each day that such failure or refusal  
7 continues after such time has expired, which penalty may  
8 be recovered in a civil action brought by the commission  
9 in the name of the state of West Virginia in the circuit  
10 court of any county wherein such person resides or is en-  
11 gaged in the activity complained of. The amount of the  
12 penalty shall be fixed by the court without a jury. The  
13 amount of any such penalties collected by the commission  
14 shall be deposited in the general fund of the state treasury  
15 according to law. Upon a request in writing from the com-  
16 mission, it shall be the duty of the prosecuting attorney  
17 of the county in which any such action for penalties ac-  
18 cruing under this section may be brought to institute and  
19 prosecute all such actions on behalf of the commission.

20 (b) For the purpose of this section, violations on sep-  
21 arate days shall be considered separate offenses.

Sec. 9. *Applications for Injunctive Relief.*—In addition  
2 to the remedy provided for in section eight of this article  
3 and in the absence of reasonable progress toward correc-  
4 tion of the statutory air pollution, the commission may

5 request the prosecuting attorney of the county in which  
6 the defendant resides or is engaged in the activity com-  
7 plained of to apply to the circuit court of such county for  
8 an injunction to restrain all violations of any final order  
9 of the commission entered pursuant to section six of this  
10 article.

Sec. 10. *Emergencies; Powers of Commission; Pro-*  
2 *cedure.*—Whenever air pollution conditions in any area  
3 of the state become such as, in the opinion of the commis-  
4 sion, to create an emergency and to require immediate  
5 action for the protection of the public health, the com-  
6 mission may, with the written approval of the governor,  
7 so find and enter such order as it deems necessary to re-  
8 duce or prevent the emission of air pollutants substan-  
9 tially contributing to such conditions. In any such order  
10 the commission shall also fix a time, not later than twenty-  
11 four hours thereafter, and place for a hearing to be held  
12 before it for the purpose of investigating and determining  
13 the factors causing or contributing to such conditions.  
14 A true copy of any such order shall be served upon per-  
15 sons whose interests are directly prejudiced thereby in

16 the same manner as a summons in a civil action may be  
17 served and a true copy of such order shall also be posted  
18 on the front door of the courthouse of the county in which  
19 the alleged conditions originated. All persons whose in-  
20 terests are prejudiced or affected in any manner by any  
21 such order shall have the right to appear in person or by  
22 counsel at the hearing and to present evidence relevant to  
23 the subject of the hearing. Within twenty-four hours after  
24 completion of the hearing the commission shall affirm,  
25 modify or set aside said order in accordance and consistent  
26 with the evidence adduced. Any person aggrieved by such  
27 action of the commission may thereafter apply by petition  
28 to the circuit court of the county for a review of the com-  
29 mission's action. The circuit court shall forthwith fix a  
30 time for a hearing de novo upon the petition and shall,  
31 after such hearing, by order entered of record affirm,  
32 modify or set aside in whole or in part the order and ac-  
33 tion of the commission. Any person whose interests shall  
34 have been substantially affected by the final order of the  
35 circuit court may appeal the same to the supreme court  
36 of appeals in the manner prescribed by law.

Sec. 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.

Sec. 12. *Severability.*—The provisions of this act are severable and if any provision, section or part thereof shall

3 be held invalid, unconstitutional or inapplicable to any  
4 person or circumstance, such invalidity, unconstitution-  
5 ality or inapplicability shall not affect or impair any of  
6 the remaining provisions, sections or parts of the act or  
7 their application to him or to other persons and circum-  
8 stances. It is hereby declared to be the legislative intent  
9 that this act would have been adopted if such invalid or  
10 unconstitutional provision, section or part had not been  
11 included therein.

Sec. 13. *Effective Date of Rules and Regulations.*—The  
2 rules and regulations promulgated pursuant to the pro-  
3 visions of this article shall be of no effect until one (1)  
4 year after the effective date of this article.

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

*Howard Davis, 2<sup>d</sup>*  
Chairman Senate Committee

*Mrs. H. H. Withrow*  
Chairman House Committee

Originated in the Senate.

Takes effect *immediately* from *the date of* passage.

*Thomas Hayes*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Howard Carson*  
President of the Senate

*Julius W. Singleton Jr.*  
Speaker House of Delegates

The within *approved* this the *eleventh* day of *March*, 1961.

*M. M. Barr*  
Governor

