

***** ACT 116 OF 1978 THIS ACT DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

THE JOHN C. HERTEL TOXIC SUBSTANCE CONTROL COMMISSION ACT
Act 116 of 1978

AN ACT to create a state toxic substance control commission and to prescribe its powers and duties; to require the reporting of certain abnormalities in human or animal health; to create a toxic substance emergency fund; to prescribe certain powers of the governor; and to prescribe penalties.

History: 1978, Act 116, Eff. Jan. 1, 1979.

The People of the State of Michigan enact:

***** 286.181 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.181 Short title.

Sec. 1. This act shall be known and may be cited as “the John C. Hertel toxic substance control commission act”.

History: 1978, Act 116, Eff. Jan. 1, 1979.

Compiler's note: For transfer of toxic substance control commission to the Department of Natural Resources, see E.R.O. No. 1988-1, compiled at MCL 299.12 of the Michigan Compiled Laws.

***** 286.182 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.182 Definitions.

Sec. 2. As used in this act:

- (a) “Commission” means the state toxic substance control commission created in section 3.
- (b) “Federal toxic substance control act” means Public Law 94-469, 15 U.S.C. 2601 to 2629 and any regulations adopted pursuant to that act.
- (c) “Person” means an individual, partnership, cooperative, association, private or public corporation, personal representative, receiver, trustee, assignee, or other legal entity.
- (d) “Toxic substance” means that quality of a natural or man-made element or compound, metal, or metallic, organic, or inorganic compound, which in an appropriate concentration, alone or in combination, poses a severe threat of gross damage to or destruction of the health, safety, or welfare of human, animal, or desirable plant life, or of the environment. This includes a substance that may reasonably be expected to result in human carcinogenesis, teratogenesis, or mutagenesis.
- (e) “Toxic substance emergency” means a condition or practice exists requiring immediate action to preserve the public health, safety, or welfare from the potential of death, disabling disease, or serious physical harm to humans, animals, or desirable plant life due to a toxic substance.
- (f) “Trade secret” means a secret formula or process, not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.183 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.183 State toxic substance control commission; creation; exercise of powers, duties, and functions; appointment, qualifications, and terms of members; vacancy; election of chairperson and other officers; meetings; public hearings; quorum; action of commission.

Sec. 3. (1) The state toxic substance control commission is created as an autonomous entity in the department of management and budget. The commission shall exercise its powers, duties, and functions independently of the director of the department of management and budget except that budget, procurement, and related management functions of the commission shall be performed by the director of the department of management and budget.

(2) The commission shall consist of the director of the department of agriculture, the director of the department of natural resources, and the director of public health, who shall serve as ex officio nonvoting members, and 9 citizens, appointed by the governor with the advice and consent of the senate. Of the voting

members, 7 shall be trained or knowledgeable in the fields of human and animal medicine and the natural sciences including zoology, botany, chemistry, and ecology and 1 member shall be a member of the general public, and 1 member shall represent a toxic substance business or industry. Not more than 5 of the voting members shall be affiliated with the same political party. A voting member shall not hold any other position in state government. A voting member shall serve for 2 years, except that of the members first appointed, 3 shall be appointed for 1 year and 4 shall be appointed for 2 years. Following the effective date of this 1984 amendatory act adding 2 voting members to the commission, the governor shall appoint 2 new commission members to serve for 2 years, except that of the 2 new commission members, 1 shall be appointed initially for 1 year and 1 shall be appointed for 2 years.

(3) A vacancy shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(4) The commission shall elect from its voting members a chairperson and other officers it considers advisable. The term of office shall be 1 year.

(5) The commission shall hold meetings as considered necessary by the chairperson, and may hold public hearings. A meeting or hearing of the commission shall be held pursuant to Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(6) A majority of the voting members serving shall constitute a quorum. Except as provided in section 6(d), an action of the commission shall be accomplished by a majority vote of the voting members serving on the commission.

History: 1978, Act 116, Eff. Jan. 1, 1979;—Am. 1984, Act 308, Imd. Eff. Dec. 21, 1984.

***** 286.184 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.184 Commission; grounds for removal of member.

Sec. 4. The governor may remove a member of the commission upon a finding of:

- (a) Gross neglect of duty.
- (b) Corrupt conduct in office.
- (c) Misfeasance or malfeasance.
- (d) Mental or physical incapacity.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.185 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.185 Commission; compensation and expenses.

Sec. 5. The voting members of the commission shall receive per diem compensation as determined by the legislature and shall be allowed actual and necessary expenses incurred in the performance of their official duties.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.186 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.186 Commission; duties generally.

Sec. 6. The commission shall:

(a) Investigate all reports, problems, or irregularities which involve a toxic substance or could involve a toxic substance, including illnesses or abnormalities in animal or human behavior, or plant development. This investigation shall be conducted when a state agency or department fails to make the necessary investigation, or when there is a lack of understanding as to which department or agency is responsible for making the investigation.

(b) Investigate and compile data not available under the federal toxic substance control act relative to the health, safety, or environmental testing programs and commercial distribution of a product containing a toxic substance as identified in section 6(a) sold or to be sold in this state. This investigation shall be conducted when a state agency or department fails to make the necessary investigation, or when there is a lack of understanding as to which department or agency is responsible for making the investigation.

(c) Alert the governor and the legislature when a potential toxic substance problem has been identified and coordinate, assist, and monitor the investigation and evaluation of the potential problem by a state agency. The commission shall provide periodic reports of the progress being made in the evaluation of the problem to

the governor and the legislature.

(d) Declare a toxic substance emergency upon a vote of 2/3 of the voting members. A draft of that declaration shall be presented to the governor for his or her signature. The draft shall include a statement justifying the commission action, including an explanation as to why existing administrative procedures are inadequate to protect the public against widespread serious harm. When the declaration is signed by the governor, a toxic substance emergency exists. When this occurs, the commission shall:

(i) Make all decisions regarding the sale, use, and method of disposal of the identified toxic substance in this state.

(ii) Promulgate rules under section 48 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.248 of the Michigan Compiled Laws.

(iii) Designate a state agency as a lead agency, monitor the activities of this designated agency, and report to the governor and the legislature on these activities.

(e) Coordinate the activity of all state agencies involved in a toxic substance emergency.

(f) Centralize, collect, monitor, and disseminate information on the existence, manufacture, use, and disposal of the identified toxic substances and make recommendations for the appropriate state agency to be responsible for the regulation of these toxic substances.

(g) If a toxic substance emergency is declared pursuant to subdivision (d), immediately notify all state departments and appropriate local officials of the emergency. Not more than 48 hours after receipt of notification that a toxic substance emergency exists, each state department shall notify local authorities within its area of concern, health officers, health professionals, and other persons and individuals who may be affected by the toxic substance emergency.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.187 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.187 Declaration of toxic substance emergency; activities of commission; petition to restrain condition or practice; cessation or continuation of emergency.

Sec. 7. (1) When a toxic substance emergency is declared under section 6(d), the commission's activities may include the following:

(a) Issuing orders to persons to prohibit the distribution, use, or dissemination of the identified toxic substance.

(b) Initiating the necessary action to allow the commission to become the primary coordinating state agency for the reception and distribution of federal assistance.

(c) Directing the disposal of, in an appropriate manner, a toxic substance and utilize the capabilities and personnel of a state or private agency in providing for this disposal.

(d) Ordering a state agency to exercise its normal or emergency powers to alleviate or control a toxic substance emergency.

(e) Ordering a state agency to conduct tests on humans, animals, plants, or an inorganic substance to determine the nature, scope, or identity of a toxic substance or the extent of the exposure to a toxic substance.

(f) Inspecting records directly related to the toxic emergency. Inspections shall not extend to financial, sales, production, pricing, personnel, and research data not related to health and environment.

(2) Upon failure of a person or state or private agency to comply with an order of the commission issued under this section, the commission may petition the circuit court having jurisdiction to restrain a condition or practice which the commission determines may cause a toxic substance emergency.

(3) A toxic substance emergency shall cease to exist 60 days after its declaration. Upon a vote of 2/3 of voting members, and the concurrence of the governor, a toxic substance emergency may be continued for periods not to exceed 60 days.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.188 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.188 Commission; additional duties.

Sec. 8. The commission shall:

(a) Submit annually to the governor and legislature a report of its activities not more than 60 days after the end of the fiscal year. The report shall include a summary of the problems identified and evaluated under section 6.

(b) Employ personnel necessary to implement this act subject to rules of the department of civil service.

(c) Appoint an executive secretary to the commission. The executive secretary shall perform those duties delegated to that person by the commission. The commission shall not delegate the promulgation of rules to the executive secretary. The executive secretary may employ assistants, subject to civil service rules, who are selected on the basis of training, knowledge, and expertise in scientific disciplines which will aid in the collection, analysis, and evaluation of data.

(d) Promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to govern its procedures in the implementation and administration of this act. These rules shall include rules that:

(i) State the circumstances under which the commission conducts investigations provided for in section 6(a) and (b).

(ii) Establish procedures for determining when a state agency or department has failed to make a necessary investigation as provided in section 6(a) and (b).

(iii) Refine the definition of toxic substance emergency as defined in section 2(e).

(iv) Establish procedures for alerting the governor and the legislature when a potential toxic substance problem has been identified as provided in section 6(c).

(v) Establish procedures for notification of all state departments and appropriate local officials as provided in section 6(g).

(e) Examine state programs, statutes, and policies to determine the state's ability to respond to toxic substance problems and make recommendations to improve the state's ability to effectively respond to toxic substance problems. This shall include the development and periodic reevaluation of a state toxic substance emergency contingency plan which will clearly identify the responsibilities of each state agency. The first plan shall be completed not later than 1 year after the effective date of this act.

History: 1978, Act 116, Eff. Jan. 1, 1979;—Am. 1984, Act 308, Imd. Eff. Dec. 21, 1984.

***** 286.189 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.189 Commission; powers generally.

Sec. 9. The commission may:

(a) For the accomplishment of its purposes, recommend that the appropriate state agency provide assistance, or undertake studies, inquiries, surveys, or analyses the commission considers relevant. This includes requesting the cooperation of a public or private agency, including an institute, university, foundation, or research organization.

(b) Investigate and compile data relative to safety, health, testing, or distribution of a product containing a toxic substance to be sold in this state.

(c) Require from a state agency, public institution, or university, assistance, studies, surveys, or analyses the commission considers necessary or desirable to properly carry out its responsibilities under section 6.

(d) Make and sign contractual agreements with a private or public institution, foundation, or research organization necessary to properly carry out the purposes of section 6.

(e) Make and sign any agreements and perform any acts that may be necessary, desirable, or proper to carry out the purposes of this act.

(f) Upon application to circuit court subpoena witnesses, administer oaths, and examine the books and records of a person concerning a matter involving a toxic substance, subject to prior court authorization during a toxic substance emergency.

(g) Establish specialized advisory committees it considers necessary.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.190 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.190 Confidentiality of trade secrets.

Sec. 10. Information reported to or otherwise obtained by the commission in connection with a toxic substance emergency or a proceeding under this act which contains or which might reveal a trade secret shall be considered confidential. In a proceeding under this act the commission or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets and to carry out the objectives of this act.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.191 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.191 Toxic substance emergency fund; creation; expenditures.

Sec. 11. (1) There is created within the department of management and budget a toxic substance emergency fund in an amount as determined annually by the legislature.

(2) Upon declaration of a toxic substance emergency, the commission may make necessary expenditures from this fund to meet expenses incurred by the state in responding to a toxic substance emergency.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.192 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.192 Reporting abnormality or irregularity in health or behavior; failure to make report.

Sec. 12. (1) A person who has evidence supporting reasonable belief that an abnormality or irregularity in human or animal health or behavior exists which could be caused by a toxic substance shall report this information to the commission, unless the person has actual knowledge that the commission has been adequately informed of this information.

(2) Failure to make a report required by subsection (1) is a violation of this act.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.193 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 186.194 *****

286.193 Violation as misdemeanor; penalties.

Sec. 13. (1) A person who violates this act is guilty of a misdemeanor, punishable by a fine of up to \$5,000.00 for each day of the violation. As used in this subsection, "person" does not include an individual.

(2) An individual who violates this act is guilty of a misdemeanor, punishable by a fine of up to \$100.00 for each day of the violation. As used in this subsection, "individual" means a human being.

History: 1978, Act 116, Eff. Jan. 1, 1979.

***** 286.194 THIS SECTION DOES NOT APPLY AFTER DECEMBER 31, 1989: See (1) of 286.194 *****

286.194 Effective date; applicability of act; study committee to recommend future status of commission; appointment; report.

Sec. 14. (1) This act shall take effect January 1, 1979, and shall not apply after December 31, 1989.

(2) In February, 1983, the speaker of the house of representatives, the majority leader of the senate, and the governor shall each appoint a designee to serve on a study committee to recommend to the legislature and executive the future status of the toxic substance control commission. The recommendations of this study committee shall be reported publicly by December 31, 1984.

History: 1978, Act 116, Eff. Jan. 1, 1979;—Am. 1982, Act 336, Imd. Eff. Dec. 16, 1982;—Am. 1984, Act 308, Imd. Eff. Dec. 21, 1984.