

S.197

An act relating to liability for toxic substance exposures or releases.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. chapter 219 is added to read:

CHAPTER 219. MEDICAL MONITORING DAMAGES

§ 7201. DEFINITIONS

As used in this chapter:

(1) “Disease” means any disease, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance.

(2) “Exposure” means ingestion, inhalation, contact with the skin or eyes, or any other physical contact.

(3) “Facility” means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(4) “Farming” shall have the same meaning as in 10 V.S.A. § 6001.

(5) “Large user of toxic substances” means, at the time of the release, the owner or operator of a facility that employs 10 or more employees, has a Standard Industrial Classification (SIC) Code, and manufactures, processes, or

otherwise uses, exclusive of sales or distribution, more than 1,000 pounds of one or more, or a combination of, toxic substances per year.

(6) “Medical monitoring damages” means the cost of medical tests or procedures and related expenses incurred for the purpose of detecting latent disease resulting from exposure.

(7) “Pesticide” shall have the same meaning as in 6 V.S.A. § 1101.

(8) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, or groundwater.

(9) “Sport shooting range” shall have the same meaning as in section 5227 of this title.

(10)(A) “Toxic substance” means any substance, mixture, or compound that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A. chapter 159;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound; or

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159; or

(vi) the substance, when released, can be shown by expert testimony to pose a potential threat to human health or the environment.

(B) “Toxic substance” shall not mean:

(i) a pesticide when applied consistent with good practice conducted in conformity with federal, State, and local laws, rules, and regulations and according to manufacturer’s instructions;

(ii) manure or nutrients applied to land by a person engaged in farming according to the requirements of 6 V.S.A. chapter 215; or

(iii) lead ammunition or components thereof discharged, used, or stored at a sport shooting range implementing a lead management plan approved by the Agency of Natural Resources.

§ 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO TOXIC SUBSTANCES

(a) A person with or without a present injury or disease shall have a cause of action for medical monitoring damages against a large user of toxic substances who released a substance, mixture, or compound that meets the definition of toxic substance under section 7201 of this title and all of the following are demonstrated by a preponderance of the evidence:

(1) The person was exposed to the toxic substance at greater than normal background concentration levels;

(2) The exposure was the result of tortious conduct by the large user of toxic substances who released the toxic substance, including conduct that constitutes negligence, battery, strict liability, trespass, or nuisance;

(3) As a proximate result of the exposure, the person has a greater risk than the general public of contracting a latent disease. A person does not need to prove that the latent disease is certain or likely to develop as a result of the exposure.

(4) Diagnostic testing is reasonably necessary. Testing is reasonably necessary if a physician would prescribe testing for the purpose of detecting or monitoring the latent disease.

(5) Medical tests or procedures exist to detect the latent disease.

(b) A court shall place the award of medical monitoring damages into a court-supervised program administered by a medical professional.

(c) If a court places an award of medical monitoring damages into a court-supervised program pursuant to subsection (b) of this section, the court shall also award to the plaintiff reasonable attorney's fees and other litigation costs reasonably incurred.

(d) Nothing in this chapter shall be deemed to preclude the pursuit of any other civil or injunctive remedy available under statute or common law, including the right of any person to recover for damages related to the manifestation of a latent disease. The remedies in this chapter are in addition to those provided by existing statutory or common law.

(e) This section does not preclude a court from certifying a class action for medical monitoring damages.

## Sec. 2. WEBSITE; LINKS TO LIST OF TOXIC SUBSTANCES

The Commissioner of Health shall maintain on the Department of Health website a link to each of the lists of substances, mixtures, or compounds referenced in the definition of "toxic substance" under 12 V.S.A. § 7201.

\* \* \* Effective Date \* \* \*

## Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.