

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 197
3 entitled “An act relating to liability for toxic substance exposures or releases”
4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 * * * Strict Liability; Toxic Substance Release * * *

8 Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

9 Subchapter 5. Strict Liability for Toxic Substance Release

10 § 6685. DEFINITIONS

11 As used in this subchapter:

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

18 (2) “Farming” shall have the same meaning as in section 6001 of this
19 title.

20 (3) “Harm” means any personal injury or property damage, excluding
21 medical monitoring damages recoverable under 12 V.S.A. chapter 219.

1 (4) “Large user of toxic substances” means, at the time of the release or
2 any time thereafter, the owner or operator of a facility that employs 10 or more
3 employees, has a Standard Industrial Classification (SIC) Code, and
4 manufactures, processes, or otherwise uses, exclusive of sales or distribution,
5 more than 1,000 pounds of one or more, or a combination of, toxic substances
6 per year.

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

8 (6) “Release” means any intentional or unintentional act or omission
9 that:

10 (A) is unpermitted or that violates law or a permit; and

11 (B) allows a toxic substance to enter the air, land, surface water, or
12 groundwater.

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

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

1 (ii) the substance, mixture, or compound is defined as a
2 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under
3 10 V.S.A. chapter 159;

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

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

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

13 (vi) the user of the substance, mixture, or compound knew or
14 should have known that the released substance, mixture, or compound posed a
15 threat to human health or the environment.

16 (B) “Toxic substance” shall not mean:

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

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

1 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

2 (a) Any large user who releases a substance, mixture, or compound that
3 meets the definition of toxic substance under section 6685 of this title this at
4 the time of the release shall be held strictly, jointly, and severally liable for any
5 harm resulting from the release.

6 (b) A large user held liable under subsection (a) of this section shall have
7 the right to seek contribution from any other person who caused or contributed
8 to the release. The right to contribution under this subsection shall include the
9 right of a large user to seek contribution from the manufacturer of the released
10 toxic substance when a court determines that the manufacturer failed to warn
11 the large user of the toxic substance's propensity to cause the harm
12 complained of.

13 (c) Nothing in this section shall be construed to supersede or diminish in
14 any way existing remedies available to a person or the State at common law or
15 under statute.

16 Sec. 2. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON
17 INSURANCE POLICY PRICING AND AVAILABILITY

18 (a) The Commissioner of Financial Regulation shall monitor how the
19 imposition of strict liability for toxic substance releases pursuant to 10 V.S.A.
20 chapter 159, subchapter 5 affects the pricing and availability of commercial
21 general liability insurance policies, residential homeowner's insurance policies,

1 and other insurance policies in the State. The Commissioner of Financial

2 Regulation shall evaluate whether:

3 (1) insurance policies in the State are more expensive or less available
4 due to the strict liability provisions of 10 V.S.A. chapter 159, subchapter 5; and

5 (2) the insurance market in the State is negatively affected in
6 comparison to the national market solely due to the strict liability provisions of
7 10 V.S.A. chapter 159, subchapter 5.

8 (b) On or before January 15, 2019, and annually thereafter, the
9 Commissioner of Financial Regulation shall report to the Senate Committee on
10 Finance and the House Committee on Commerce and Economic Development
11 the results of its evaluation under subsection (a) of this section.

12 * * * Medical Monitoring Damages * * *

13 Sec. 3. 12 V.S.A. chapter 219 is added to read:

14 CHAPTER 219. MEDICAL MONITORING DAMAGES

15 § 7201. DEFINITIONS

16 As used in this chapter:

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

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

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

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

8 (5) “Large user of toxic substances” means the owner of a facility with
9 10 or more full-time employees that has a Standard Industrial Classification
10 (SIC) Code and that manufactures, processes, or otherwise uses, exclusive of
11 sales or distribution, more than 1,000 pounds of a toxic substance per year.

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

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

16 (8) “Release” means any intentional or unintentional act or omission
17 that:

18 (A) is unpermitted or that violates law or a permit; and

19 (B) allows a toxic substance to enter the air, land, surface water, or
20 groundwater.

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

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

10 (ii) the substance, mixture, or compound is defined as a
11 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under
12 10 V.S.A. chapter 159;

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

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

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

1 (vi) the user of the substance, mixture, or compound knew or
2 should have known that the released substance, mixture, or compound posed a
3 threat to human health or the environment.

4 (B) “Toxic substance” shall not mean:

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

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

10 § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO

11 TOXIC SUBSTANCES

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

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

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

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

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

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

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

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

18 (d) Nothing in this chapter shall be deemed to preclude the pursuit of any
19 other civil or injunctive remedy available under statute or common law,
20 including the right of any person to recover for damages related to the

1 manifestation of a latent disease. The remedies in this chapter are in addition
2 to those provided by existing statutory or common law.

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

5 **Sec. 4. WEBSITE; LINKS TO LIST OF TOXIC SUBSTANCES**

6 The Commissioner of Health shall maintain on the Department of Health
7 website a link to each of the lists of substances, mixtures, or compounds
8 referenced in the definition of “toxic substance” under 10 V.S.A. § 6685 and
9 12 V.S.A. § 7201.

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11 * * * Effective Dates * * *

12 **Sec. 5. EFFECTIVE DATES; IMPLEMENTATION**

13 (a) This section and Secs. 2 (DFR report on insurance policy pricing),
14 3 (medical monitoring cause of action), and 4 (website links) shall take effect
15 on July 1, 2018.

16 (b) Sec. 1 (strict liability; toxic substance release) shall take effect July 1,
17 2019 and shall apply prospectively and only to releases that occur on or after
18 July 1, 2019.

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20 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE