

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

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

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

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

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

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

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

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.

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

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

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

19                  § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

20                  (a) Any large user who releases a substance, mixture, or compound that  
21                  meets the definition of toxic substance under section 6685 of this title shall be

1 held strictly, jointly, and severally liable for any harm resulting from the  
2 release.

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

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

13 Sec. 2. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON  
14 INSURANCE POLICY PRICING AND AVAILABILITY

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

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

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

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

10                           \* \* \* Medical Monitoring Damages \* \* \*

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

12                           CHAPTER 219. MEDICAL MONITORING DAMAGES

13           § 7201. DEFINITIONS

14           As used in this chapter:

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

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

19           (3) “Facility” means all contiguous land, structures, other  
20           appurtenances, and improvements on the land where toxic substances are  
21           manufactured, processed, used, or stored. A facility may consist of several

1 treatment, storage, or disposal operational units. A facility shall not include  
2 land, structures, other appurtenances, and improvements on the land owned by  
3 a municipality.

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

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

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

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

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

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

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

6                    (ii) the substance, mixture, or compound is defined as a  
7                    “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under  
8                    10 V.S.A. chapter 159;

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

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

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

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

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

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

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

6           § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO  
7           TOXIC SUBSTANCES

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

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

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

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



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

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

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

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

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

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

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

19           The Commissioner of Health shall maintain on the Department of Health  
20           website a link to each of the lists of substances, mixtures, or compounds

1 referenced in the definition of “toxic substance” under 10 V.S.A. § 6685 and  
2 12 V.S.A. § 7201.

3 \* \* \* Effective Dates \* \* \*

4 Sec. 5. EFFECTIVE DATES; IMPLEMENTATION

5 (a) This section and Secs. 2 (DFR report on insurance policy pricing),  
6 3 (medical monitoring cause of action), and 4 (website links) shall take effect  
7 on July 1, 2018.

8 (b) Sec. 1 (strict liability; toxic substance release) shall take effect July 1,  
9 2019 and shall apply prospectively and only to releases that occur on or after  
10 July 1, 2019.

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12 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

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Representative \_\_\_\_\_

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FOR THE COMMITTEE