

**SENATE BILL 197**

*New Liability for Toxic Substance Exposure*

**STATEMENT OF OPPOSITION**

*To the Vermont House Judiciary Committee*

April 12-13, 2018 Public Hearing

On behalf of National Association of Mutual Insurance Companies (NAMIC)<sup>1</sup> members, thank you for the opportunity to express strong opposition to Senate Bill 197.<sup>2</sup> This bill would create a new legal right for exposure-only claimants who do not currently present physical injury. These people are not sick and they may never become sick. Rather, they would be entitled to recover damages based on mere exposure to a substance that is only potentially harmful.

This bill would appear to allow recovery with only tenuous connections. For example, consider bill wording (emphasis added):

- × ... poses a potential or actual threat to human health
- × ... any disease, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance
- × ... a probable link between exposure to the toxic substance and a latent disease
- × ... can be shown by expert testimony to pose a potential threat [no meaningful or threshold amount or dose]
- × ... need not prove that the latent disease is certain or likely to develop as a result of the exposure

Strict liability standards typically are imposed by legislatures in situations considered inherently dangerous (therefore no level of care could make these activities safe). Looking at the excerpted language above, this bill may go even further by distancing or eliminating the need for a connection to cause of actual harm.

The bill is overly broad with potentially sweeping consequences. As a matter of public policy, consider the impact of this legislation on both plaintiffs and defendants. Allowing unpredictable situations for individuals and businesses seems likely to mean more lawsuits and increases in claim costs which may ultimately impact insurance premiums paid by Vermont consumers and businesses.

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NAMIC asks you to weigh the negative impacts this legislation may have on Vermont, its insurance policyholders, and its overall business community and to vote no to Senate Bill 197. Thank you for the opportunity to express our serious concerns.

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<sup>1</sup> NAMIC is the largest property/casualty trade association in the US, serving regional and local mutual insurance companies on main streets across America as well as many large national insurers. NAMIC consists of more than 1,400 property/casualty insurance companies serving more than 170 million auto, home, and business policyholders, with more than \$230 billion in premiums. In Vermont, NAMIC members write about 48% of the property-casualty insurance market.

<sup>2</sup> <https://legislature.vermont.gov/bill/status/2018/S.197>