

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 123  
3 entitled “An act relating to limiting liability for animal shelter and rescue  
4 organizations assisting law enforcement in animal cruelty investigations”  
5 respectfully reports that it has considered the same and recommends that the  
6 House propose to the Senate that the bill be amended by striking out all after  
7 the enacting clause and inserting in lieu thereof the following:

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,  
2           the 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;

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;

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; or

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

4                    § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

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

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

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

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

3           (a) The Commissioner of Financial Regulation shall monitor how the  
4           imposition of strict liability for toxic substance releases pursuant to 10 V.S.A.  
5           chapter 159, subchapter 5 affects the pricing and availability of commercial  
6           general liability insurance policies, residential homeowner’s insurance policies,  
7           and other insurance policies in the State. The Commissioner of Financial  
8           Regulation shall evaluate whether:

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

11                   (2) the insurance market in the State is negatively affected in  
12           comparison to the national market solely due to the strict liability provisions of  
13           10 V.S.A. chapter 159, subchapter 5.

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

18       **Sec. 3. 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 Sec. 4. EFFECTIVE DATES; IMPLEMENTATION

4 (a) This section and Secs. 2 (DFR report on insurance policy pricing), and  
5 3 (website links) shall take effect on July 1, 2018.

6 (b) Sec. 1 (strict liability; toxic substance release) shall take effect July 1,  
7 2019 and shall apply prospectively and only to releases that occur on or after  
8 July 1, 2019.

9 and that after passage the title of the bill be amended to read: “An act  
10 relating to strict liability for toxic substance release”  
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12  
13  
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15 (Committee vote: \_\_\_\_\_)

16 \_\_\_\_\_

17 Representative \_\_\_\_\_

18 FOR THE COMMITTEE