Please accept the following input on S197 from a loss control specialist who specializes in toxic tort litigation. I asked this attorney to review S197 after learning of the implications and potential impact on my insurability.

1. The language of Section 6685(2) makes no provision for routine daily "Releases" to which everyone is exposed, such as those that occur when pumping fuel at a gas station, walking or driving past a paving crew while it uses industrial coatings or materials, working on farm equipment, or even refinishing your own floors. All of these activities include exposure to various solvents and other compounds identified as hazardous under Federal Statute and Regulations.

- There needs to be language that qualifies a release to mean something other than everyday incidental exposures. It cannot possibly be the intent of the General Assembly that one could bring suit against every gas station they visit due to the presence of compounds that have mere "capacity" to produce injury, 6685(3)(A).
- A "permitted" release as described in 6685(2) should never give rise to this kind of liability, otherwise why have a permit at all?
- The term "any harm" as used in Sec. 6686(a) is highly problematic. As a toxic tort, what burden of proof must be met to show "any"?
- Sec. 6686(c) ostensibly allows double recovery for employees who may recover workers compensation for injurious exposures at work, arguably the most likely source of exposures. Why should an employer be liable twice for the same event, particularly if the exposure was "permitted"? Why should a lawyer get two sets of fees for the same event?

2. The bill as passed by the Senate has no meaningful burden of proof to sustain an award for damages of any kind, much less a lifetime of medical expenses. Generally speaking, lawsuits arising from exposure to hazardous substances require a claimant make two critical showings:

A. the compound itself is capable of causing acute or potential future harm;
B. the *quantified* level exposure suffered by claimant has, to a reasonable degree of scientific or medical probability, caused acute or potential future harm.

These two showings equate to a dose-response model. There are many things in life that have "the capacity" to do harm but do not, precisely because the exposure is too small. The bill as passed by the Senate ignores this critical distinction.

3. The definition of "Medical monitoring damages" of 7201(3) must have language that requires a physician or otherwise qualified medical professional to opine that such costs or tests are "medically reasonable and necessary". It is not enough to say only that damages are awarded based upon the premise that a physician "would" prescribe testing. Sec. 7202(a)(4).

Finally, this is a bill that is focused upon medicine and science that has no requirement that science and medicine determine the legal outcome. No matter how well intentioned, this bill accomplishes nothing but the generation of confusing, costly and time consuming litigation.