

S-197

Commentary by Jamie Bolduc

As a small business owner I have many concerns with the impact proposed S 197 would have on Vermont businesses, big or small. As well, it opens the door for lengthy battles years down the road trying to decipher the interpretation of the intent. I do agree with the intent of protecting individuals from wrongful harm and expect due diligence in safety, protection, and operation procedures for those utilizing potentially hazardous chemicals. I do believe however legislation needs to slow down and research the implementation of what laws are currently in place. When looking at the 46 page list of chemicals, the exposure amounts, the lack of definition of exposure inhalation vs physical contact, I cannot begin to imagine the impact. For example, Glycol, the chemical used to deice planes is on the list. What impact will that have on air service to Vermont? S197 is a reactive bill written in response to an incident, instead of a proactive approach to further prevention and reoccurrence of a similar incident.

C.F.R. 302.4

The list of toxic chemicals is 46 pages long. Many of the chemicals are included as ingredients in products we use every day, i.e.; cleaning products, petroleum, hair coloring, and lawn care products. When pumping gas at a gas station a person is exposed to benzene, not in the volume listed for a single exposure of toxicity, yet cumulative over the course of many years and many self-serve stations. There is no measurement of the potentially inhaled amount of benzene under these circumstances. The same can be said of a client sitting in the chair next to a person having their hair colored at a beauty parlor. There is no direct ski contact, but most definitely some unmeasurable amount of fumes will be inhaled. Second hand smoke has numerous chemicals and although it has been removed from the workplace we often encounter smokers on the sidewalks or entrances to buildings. Do these single instances give someone the right to demand on going testing for exposure? What about exposure in our waterways. Phosphorous is on the list, yet waste water treatment plants and storm water drains often discharge excess or partially treated water into our rivers and lakes. Would those swimming in Lake Champlain be eligible for testing and compensation? Even dish soap has an ingredient on the list. I know this all sounds extreme, but that is what S197 is. An extreme response that doesn't take into account cumulative repetitive exposure either through inhalation or or physical contact with everyday products. Although I feel for those affected in Bennington I think the scope of S197 is too broad. What don't we know now that could affect our future? Perhaps this bill is targeted to ultimately go after the manufacturers or big business with deep pockets. Unfortunately the impact it would have on those who choose to make Vermont home and operate any type of small business would be extremely damaging.

The Person

This bill repeatedly states the Person who caused or contributed to the release as being liable and responsible. As an employee/manager does that mean an individual would be held responsible? How would that responsibility affect businesses and corporations and does it open up personal liability for the owners if exposure is determined to be work related. At that point is the creation of a corporation or the purchase of an umbrella policy no longer enough to protect employees or owners?

Monitoring of insurance rates

We have already established from insurance company testimony and input that insurance rates will go up should S197 be adopted. In fact in some cases making businesses uninsurable. The bill as proposed says the insurance rates will be monitored after implementation. To what end? Will companies be reimbursed if rates climb too drastically, will the State regulate insurance rates? If a business closes, does the person have to hold insurance to be protected and who will pay for that. As in the case in New York with fall rates, similar legislation had no effect on prevention, just increased rates. Therefore it seems more reasonable to research these affects prior to enacting the law.

Attracting Business

If a business is looking to establish a manufacturing or industrial plant in the North East/Canadian Region and has a choice between VT, NH, NY, or Canada, S197 would be an immediate red flag strike against a VT location.

Existing Business

Many businesses that have a choice have already suggested they would very quickly relocate should S197 pass, not wanting to deal with the increased insurance premiums or long term liability of such a broad reaching and poorly defined bill. The scope of chemicals that is 46 pages long impacts cleaning companies, hair dressers, garages, manufacturing, industrial, hospitals, firemen, lawn and pool maintenance companies, land owners, and on and on.

Permitted Release

The term permitted release implies a permit has been applied for, the release approved, and the permit granted. Yet S197 implies despite a permit a person could still be held responsible and liable. This negates the permit approved by a binding entity, despite the best efforts of the permitted person.

Workman's Compensation

Businesses are required to carry workman's compensation. Under the terms of S197 and strict liability an employee would be able to go after a personal claim as well entitling them to double recovery. Why should an employer be liable twice for the same alleged exposure without any ability to defend against it? The strict liability clause requires no burden of proof that it is the direct result of a single exposure yet does not allow the accused to present any defense. This could create a situation where false accusations are created and compensated without justification or proof.

Although I understand and appreciate the concern for the health and well-being of Vermont citizens and the intent of S197 to possibly help prevent situations like the people of Bennington County are experiencing from reoccurring in other communities, there must be a better solution. There must be laws or acts in place currently that could be expanded upon or used as guidelines to help, rather than developing a kneejerk new and extreme law without considering its overall and possibly unintended impact to the hardworking everyday Vermonter. S197 adversely affects small and large business, and as written individuals as well. I think the committee should slow down and take a better look at the ripple effect this would cause for the people of Vermont.