



Members of the Vermont House Judiciary Committee

April 13, 2018

TESTIMONY IN OPPOSITION

S. 197- An Act Relating to Liability for Toxic Substances Exposures or Releases

The American Chemistry Council (ACC) is a national trade association representing chemicals and plastics manufacturers in the United States. Our members are committed to the safety of their products and to the protection of the public health.

Over 96% of all manufactured goods are directly touched by the business of chemistry, making this industry an essential part of every facet of our nation's economy. Chemistry provides significant economic benefits in every state including Vermont. Thanks to chemistry, our lives are healthier, safer, more sustainable and productive than before. The chemistry industry employs over 1100 people in Vermont.

ACC is opposed to S. 197, a bill that would impose joint, several, and strict liability for harm resulting from release of toxic substances and that would establish a private right of action for medical monitoring damages due to exposure.

This bill is overly broad and has potentially negative consequences for businesses, consumers and emerging technologies.

This bill creates a medical monitoring program that is overly broad and not scientifically based.

- The bill gives any person a cause of action for lifetime medical monitoring if they are exposed to a toxic substance regardless of dose or duration of exposure, which subjects companies or persons found liable to unpredictable and uncapped costs.
- The definitions of "disease," which includes any "adverse physiological or chemical change" and "linked with" are overly broad and not scientifically based.
- The definition of "medical monitoring damages" does not require a physician or qualified medical professional to verify that costs, tests, treatments are medically necessary.
- This legislation also awards attorney's fees and costs to medical monitoring awards when this is not provided in similar causes of action.

This bill creates a new right of legal action for exposure-only claimants, which will encourage lawsuits.

- The broad language in this bill would allow claimants to recover without having to prove that injury or disease is likely to occur or develop as a result of exposure. There is no requirement that a claimant scientifically connect a quantified level of exposure to a toxic substance caused disease or injury.
- Similarly, the bill does not require burden of proof to sustain an award for damages or payment of a lifetime of medical expenses.



This bill will create a disincentive for innovation and emerging technologies.

- The definitions in this bill hold companies responsible for the foreseeable as well as unforeseeable events and outcomes, regardless of whether or not they are following current federal and state laws as well as permitting requirements.
- This will put Vermont at a competitive disadvantage in attracting new companies and industries by adding unknown risk into the cost of doing business.
- The overly broad definitions and strict liability will not only create unpredictable economic situations for companies and individuals but it also will mean more lawsuits and increased insurance premiums.

This bill treats responsible manufacturers and companies, who abide by all applicable federal and state regulations and obtain proper permits, the same as those that are negligent or knowingly disregard laws.

- This bill implies that a company that applies for and obtains a permitted release could still be held liable despite having proper approvals from a government entity/authority.
- This bill extends liability to every entity within the chain of command, even if the release was permitted by law. It applies to any intended or unintended, permitted or unpermitted release, which effectively negates the statutory process of regulating discharges.

**For additional information or questions, please contact Margaret Gorman,
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