

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 197  
3 entitled “An act relating to liability for toxic substance exposures or releases”  
4 respectfully reports that it has considered the same and recommends that the  
5 House propose to the Senate that the bill be amended by striking out all after  
6 the enacting clause and inserting in lieu thereof the following:

7 \* \* \* Strict Liability; Toxic Substance Release \* \* \*

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 the owner of a facility with  
2           10 or more full-time employees that has a Standard Industrial Classification  
3           (SIC) Code and that manufactures, processes, or otherwise uses, exclusive of  
4           sales or distribution, more than 1,000 pounds of a toxic substance per year.

5           (5) “Pesticide” shall have the same meaning as in 6 V.S.A. § 1101.

6           (6) “Release” means any intentional or unintentional, permitted or  
7           unpermitted, act or omission that allows a toxic substance to enter the air, land,  
8           surface water, groundwater, or any other place where the toxic substance may  
9           be located.

10           (7)(A) “Toxic substance” means any substance, mixture, or compound  
11           that has the capacity to produce personal injury or illness to humans through  
12           ingestion, inhalation, or absorption through any body surface and that satisfies  
13           one or more of the following:

14                   (i) the substance, mixture, or compound is listed on the U.S.  
15           Environmental Protection Agency Consolidated List of Chemicals Subject to  
16           the Emergency Planning and Community Right-To-Know Act, Comprehensive  
17           Environmental Response, Compensation and Liability Act, and Section 112(r)  
18           of the Clean Air Act;

19                   (ii) the substance, mixture, or compound is defined as a  
20           “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under  
21           10 V.S.A. chapter 159;

1                    (iii) testing has produced evidence, recognized by the National  
2                    Institute for Occupational Safety and Health or the U.S. Environmental  
3                    Protection Agency, that the substance, mixture, or compound poses acute or  
4                    chronic health hazards;

5                    (iv) the Department of Health has issued a public health advisory  
6                    for the substance, mixture, or compound; or

7                    (v) the Secretary of Natural Resources has designated the  
8                    substance, mixture, or compound as a hazardous waste under 10 V.S.A.  
9                    chapter 159.

10                  (B) “Toxic substance” shall not mean:

11                  (i) a pesticide when applied consistent with good practice  
12                  conducted in conformity with federal, State, and local laws and regulations and  
13                  according to manufacturer's instructions; or

14                  (ii) manure or nutrients applied to land by a person engaged in  
15                  farming according to the requirements of 6 V.S.A. chapter 215.

16                  § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

17                  (a) Any large user who releases a toxic substance that was listed or  
18                  identified as a toxic substance under this chapter at the time of the release shall  
19                  be held strictly, jointly, and severally liable for any harm resulting from the  
20                  release.

1        (b) A large user held liable under subsection (a) of this section shall have  
2        the right to seek contribution from any other person who caused or contributed  
3        to the release. The right to contribution under this subsection shall include the  
4        right of a large user to seek contribution from the manufacturer of the released  
5        toxic substance when a court determines that the manufacturer failed to warn  
6        the large user of the toxic substance’s propensity to cause the harm complained  
7        of.

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

11       § 6687. LIST OF TOXIC SUBSTANCES

12       The Commissioner of Health shall maintain a list of all toxic substances.  
13       The Commissioner shall update the list of toxic substances as new substances,  
14       mixtures, or compounds are listed or identified as a toxic substance. The  
15       Commissioner shall post the list of toxic substances to the website of the  
16       Department of Health.

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

19       (a) The Commissioner of Financial Regulation shall monitor how the  
20       imposition of strict liability for toxic substance releases pursuant to 10 V.S.A.  
21       chapter 159, subchapter 5 affects the pricing and availability of commercial

1 general liability insurance policies, residential homeowner’s insurance policies,  
2 and other insurance policies in the State. The Commissioner of Financial  
3 Regulation shall evaluate whether:

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

6 (2) the insurance market in the State is negatively affected in  
7 comparison to the national market solely due to the strict liability provisions of  
8 10 V.S.A. chapter 159, subchapter 5.

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

13 \* \* \* Medical Monitoring Damages \* \* \*

14 Sec. 3. 12 V.S.A. chapter 219 is added to read:

15 CHAPTER 219. MEDICAL MONITORING DAMAGES

16 § 7201. DEFINITIONS

17 As used in this chapter:

18 (1) “Disease” means any disease, ailment, or adverse physiological or  
19 chemical change linked with exposure to a toxic substance.

20 (2) “Exposure” means ingestion, inhalation, contact with the skin or  
21 eyes, or any other physical contact.

1           (3) “Facility” means all contiguous land, structures, other  
2           appurtenances, and improvements on the land where toxic substances are  
3           manufactured, processes, used, or stored. A facility may consist of several  
4           treatment, storage, or disposal operational units. A facility shall not include  
5           land, structures, other appurtenances, and improvements on the land owned by  
6           a municipality.

7           (4) “Farming” shall have the same meaning as in 10 V.S.A. § 6001.

8           (5) “Large user of toxic substances” means the owner of a facility with  
9           10 or more full-time employees that has a Standard Industrial Classification  
10           (SIC) Code and that manufactures, processes, or otherwise uses, exclusive of  
11           sales or distribution, more than 1,000 pounds of a toxic substance per year.

12           (6) “Medical monitoring damages” means the cost of medical tests or  
13           procedures and related expenses incurred for the purpose of detecting latent  
14           disease resulting from exposure.

15           (7) “Pesticide” shall have the same meaning as in 6 V.S.A. § 1101.

16           (8) “Release” means any intentional or unintentional, permitted or  
17           unpermitted, act or omission that allows a toxic substance to enter the air, land,  
18           surface water, groundwater, or any other place where the toxic substance may  
19           be located.

20           (9)(A) “Toxic substance” means any substance, mixture, or compound  
21           that has the capacity to produce personal injury or illness to humans through

1 ingestion, inhalation, or absorption through any body surface and that satisfies  
2 one or more of the following:

3 (i) the substance, mixture, or compound is listed on the U.S.  
4 Environmental Protection Agency Consolidated List of Chemicals Subject to  
5 the Emergency Planning and Community Right-To-Know Act, Comprehensive  
6 Environmental Response, Compensation and Liability Act, and Section 112(r)  
7 of the Clean Air Act;

8 (ii) the substance, mixture, or compound is defined as a  
9 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under  
10 10 V.S.A. chapter 159;

11 (iii) testing has produced evidence, recognized by the National  
12 Institute for Occupational Safety and Health or the U.S. Environmental  
13 Protection Agency, that the substance, mixture, or compound poses acute or  
14 chronic health hazards;

15 (iv) the Department of Health has issued a public health advisory  
16 for the substance, mixture, or compound; or

17 (v) the Secretary of Natural Resources has designated the  
18 substance, mixture, or compound as a hazardous waste under 10 V.S.A.  
19 chapter 159.

20 (B) “Toxic substance” shall not mean:

1                    (i) a pesticide when applied consistent with good practice  
2                    conducted in conformity with federal, State, and local laws and regulations and  
3                    according to manufacturer's instructions; or

4                    (ii) manure or nutrients applied to land by a person engaged in  
5                    farming according to the requirements of 6 V.S.A. chapter 215.

6                    § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO

7                    TOXIC SUBSTANCES

8                    (a) A person with or without a present injury or disease shall have a cause  
9                    of action for medical monitoring damages against a large user of toxic  
10                   substances who released a toxic substance if all of the following are  
11                   demonstrated by a preponderance of the evidence:

12                   (1) The person was exposed to the toxic substance at greater than  
13                   normal background concentration levels;

14                   (2) The exposure was the result of tortious conduct by the large user of  
15                   toxic substances who released the toxic substance, including conduct that  
16                   constitutes negligence, battery, strict liability, trespass, or nuisance;

17                   (3) As a proximate result of the exposure, the person has a significantly  
18                   increased risk of contracting a latent disease. A person does not need to prove  
19                   that the latent disease is certain or likely to develop as a result of the exposure.

1           (4) Diagnostic testing is reasonably necessary. Testing is reasonably  
2           necessary if a physician would prescribe testing for the purpose of detecting or  
3           monitoring the latent disease.

4           (5) Medical tests or procedures exist to detect the latent disease.

5           (b) A court shall place the award of medical monitoring damages into a  
6           court-supervised program administered by a medical professional.

7           (c) If a court places an award of medical monitoring damages into a court-  
8           supervised program pursuant to subsection (b) of this section, the court shall  
9           also award to the plaintiff reasonable attorney's fees and other litigation costs  
10           reasonably incurred.

11           (d) Nothing in this chapter shall be deemed to preclude the pursuit of any  
12           other civil or injunctive remedy available under statute or common law,  
13           including the right of any person to recover for damages related to the  
14           manifestation of a latent disease. The remedies in this chapter are in addition  
15           to those provided by existing statutory or common law.

16           (e) This section does not preclude a court from certifying a class action for  
17           medical monitoring damages.

18   \* \* \* Effective Date \* \* \*

19           Sec. 3. EFFECTIVE DATE

20           This act shall take effect on July 1, 2018.

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(Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

FOR THE COMMITTEE