

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: _____)

Representative _____

FOR THE COMMITTEE