

Summary of Proposed House Judiciary Amendment to S.197

Strict Liability

The draft House Judiciary amendment to S.197 would substantially narrow the scope of strict, joint, and several liability for releases of toxic substances. As passed the Senate, S.197 imposed strict, joint, and several liability on any person who released a toxic substance and the release resulted in physical injury or property damage. The proposed Judiciary amendment would limit strict liability to a large user of toxic substances who releases a toxic substance that results in harm.

A large user would be defined as an owner or a facility that:

- has 10 or more full-time employees;
- has a Standard Industrial Classification (SIC) Code; and
- manufactures, processes, or uses 1,000 pounds of a toxic substance per year.

This definition is similar to a definition of a large user of toxic substance in statute today for the toxic substance reduction program in 10 V.S.A. chapter 159, subchapter 2. Similarly, other states, such as Maine, define large users of toxic substances as those manufacturing, processing, or using 1,000 pounds or more of specific toxic substances.

Municipalities will not be subject to liability because the definition of large user is dependent on ownership of a non-municipal facility. Similarly, application of manure or nutrients by a farmer according to the requirements for such activities will also be exempt from strict liability. The amendment also explicitly exempts lawfully applied pesticides from liability. Similar language could be drafted for municipal facilities or agriculture.

Because the definition of large user substantially narrows the field of persons subject to liability, the definition of release was amended to remove the thresholds—e.g. two gallons or two pounds—for what constitutes a release. As a result, any amount of toxic substance released by a large user could trigger strict liability.

Medical Monitoring

The draft Judiciary Amendment narrows the scope of who may have a cause of action for medical monitoring damages. Similar to the changes to strict liability, a medical monitoring cause of action would be available only against a large user of a toxic substance who released a toxic substance. The definition of large user would be the same as that proposed for strict liability for toxic substance releases. The definition of release would also be the same as that proposed for strict liability.

The draft Judiciary Amendment also amends the criteria a person must demonstrate in order to qualify for an award of medical monitoring damages. Instead of simple exposure to the toxic substance as proposed by the Senate, the draft Judiciary amendment would require exposure at greater than normal background levels. In addition, instead of showing a probable link between exposure to the substance and a latent disease, a person would need to show as a proximate result of the exposure, the person has a significantly increased risk of contracting a disease. These two changes to the criteria are based on two of the criteria for medical monitoring damages in Pennsylvania.