

1 TO THE HONORABLE SENATE:

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 bill be amended by striking out all after the enacting clause and inserting in
6 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) “Harm” means any personal injury or property damage.

13 (2) “Release” means any intentional or unintentional, permitted or
14 unpermitted, act or omission that allows a toxic substance to enter the air, land,
15 surface water, groundwater, or any other place where the toxic substance may
16 be located in one or more of the following amounts:

17 (A) more than two gallons or pounds;

18 (B) two gallons or pounds or less if the amount released poses a
19 potential or actual threat to human health; or

20 (C) for any toxic substance regulated under the Comprehensive
21 Environmental Response, Compensation, and Liability Act, 42 U.S.C.

1 §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R.
2 § 302.4.

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

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

12 (ii) the substance, mixture, or compound is defined as a
13 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under
14 10 V.S.A. chapter 159;

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

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

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

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

5 (i) a pesticide regulated by the Secretary of Agriculture, Food and
6 Markets; or

7 (ii) ammunition or components thereof, firearms, air rifles,
8 discharge of firearms or air rifles, or hunting or fishing equipment or
9 components thereof.

10 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

11 (a) Any person who releases a toxic substance shall be held strictly, jointly,
12 and severally liable for any harm resulting from the release.

13 (b) Any person held liable under subsection (a) of this section shall have
14 the right to seek contribution from any other person who caused or contributed
15 to the release. The right to contribution under this subsection shall include the
16 right to seek contribution from a chemical manufacturer that released a toxic
17 substance when a court determines that the manufacturer failed to warn a
18 person of a toxic substance’s propensity to cause the harm complained of.

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

1 * * * Medical Monitoring Damages * * *

2 Sec. 2. 12 V.S.A. chapter 219 is added to read:

3 CHAPTER 219. MEDICAL MONITORING DAMAGES

4 § 7201. DEFINITIONS

5 As used in this chapter:

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

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

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

13 (4) “Release” means any intentional or unintentional, permitted or
14 unpermitted, act or omission that allows a toxic substance to enter the air, land,
15 surface water, groundwater, or any other place where the toxic substance may
16 be located in one or more of the following amounts:

17 (A) more than two gallons or pounds;

18 (B) two gallons or pounds or less if the amount released poses a
19 potential or actual threat to human health; or

20 (C) for any toxic substance regulated under the Comprehensive
21 Environmental Response, Compensation, and Liability Act, 42 U.S.C.

1 §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R.
2 § 302.4.

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

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

12 (ii) the substance, mixture, or compound is defined as a
13 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under
14 10 V.S.A. chapter 159;

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

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

1 (v) the Secretary of Natural Resources has designated the
2 substance, mixture, or compound as a hazardous waste under 10 V.S.A.
3 chapter 159; or

4 (vi) the substance, when released, can be shown by expert
5 testimony to pose a potential threat to human health or the environment.

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

7 (i) a pesticide regulated by the Secretary of Agriculture, Food
8 and Markets; or

9 (ii) ammunition or components thereof, firearms, air rifles,
10 discharge of firearms or air rifles, or hunting or fishing equipment or
11 components thereof.

12 § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO
13 TOXIC SUBSTANCES

14 (a) A person with or without a present injury or disease shall have a cause
15 of action for medical monitoring damages against a person who released a
16 toxic substance if all of the following are demonstrated by a preponderance of
17 the evidence:

18 (1) The person was exposed to the toxic substance as a result of tortious
19 conduct by the person who released the toxic substance, including conduct that
20 constitutes negligence, battery, strict liability, trespass, or nuisance;

21 (2) There is a probable link between exposure to the toxic substance and
22 a latent disease.

1 (3) The person’s exposure to the toxic substance increases the risk of
2 developing the latent disease. A person does not need to prove that the latent
3 disease is certain or likely to develop as a result of the exposure.

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

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

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

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

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

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

21 * * * Effective Date * * *

22 Sec. 3. EFFECTIVE DATE

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

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8 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE

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