

Testimony of Jill Rickard, Director of Policy, Department of Financial Regulation

S.197, an act relating to liability for toxic substance exposures or releases

Senate Committee on Judiciary

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Thank you for the opportunity to testify on S.197. As the state's primary insurance regulators, DFR is concerned about the effect of S.197 on Vermont's stable and affordable insurance market. While the bill would strengthen existing civil remedies available to Vermonters who suffer harm from exposure to unsafe chemicals, imposing a strict standard of liability upon any person, whether a manufacturing company, a local farm, or your own neighbor, who releases any substance classified as toxic would significantly impact the markets for both commercial and personal lines insurance.

With respect to commercial insurance—

S.197 may impact commercial general liability, commercial auto, professional liability, and umbrella/excess liability policies.

- Provisions in commercial policies provide for legal defense by the carrier for the insured in case of a "covered occurrence," which is generally bodily injury and property damage, and payment on the insured's behalf if the insured is "legally obligated" to pay damages. If strict liability were imposed, an insurance company would not be able to provide defenses. This would mean commercial liability coverage limits would quickly be exceeded. As a result, insurance carriers may become reluctant to insure risks where there is any chance for a release of a toxic substance.
- If the underwriting risk is too high, insurers may broaden their pollution exclusions, significantly increase rates, or pull out of the market completely.

With respect to personal lines insurance—

Because S.197 subjects "any person" to strict liability for the release of a toxic substance, the bill would significantly impact personal lines policies, including homeowners' (which includes renters' insurance, condominium unit owners' insurance, mobile home owners' insurance), auto, watercraft, and umbrella/excess liability policies.

- A note about depletion of property value based on toxic release: This bill establishes a standard of strict liability for "any harm," which is defined as "any personal injury or property damage." While property damage is not defined in the bill, it may be interpreted to include the loss of property value. In personal liability policies, property damage is typically defined as "physical injury to tangible property, including all resulting loss of use of that property." Insurance companies have typically rejected claims for loss of

market value. Therefore, homeowners may be subject to uninsured liability for releases, including accidental ones, that negatively affect property values.

- DFR does not permit “pollution” exclusions in personal lines policies. Therefore, insurance companies may choose not to underwrite certain policies if a release of toxic substances is possible. Small farms, both conventional and organic, and above-ground oil storage tanks are examples where insurance companies may refuse to underwrite or significantly increase rates for coverage.