

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;

18 (B) two gallons or less if the amount released poses a potential or
19 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) “Toxic substance” means any substance, mixture, or compound that
4 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 (A) 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 (B) the substance, mixture, or compound is defined as a “hazardous
13 material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A.
14 chapter 159;

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

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

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

3 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

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

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

12 (c) Nothing in this section shall be construed to supersede or diminish in
13 any way existing remedies available to a person at common law or under
14 statute.

15 * * * Medical Monitoring Damages * * *

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

17 CHAPTER 219. MEDICAL MONITORING DAMAGES

18 § 7201. DEFINITIONS

19 As used in this chapter:

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

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

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

6 (4) “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 in one or more of the following amounts:

10 (A) more than two gallons;

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

13 (C) for any toxic substance regulated under the Comprehensive
14 Environmental Response, Compensation, and Liability Act, 42 U.S.C.
15 §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R.
16 § 302.4.

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

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

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

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

13 (D) the Department of Health has issued a public health advisory for
14 the substance, mixture, or compound;

15 (E) the Secretary of Natural Resources has designated the substance,
16 mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159; or

17 (F) pursuant to Rule 702 of the Vermont Rules of Evidence, evidence
18 demonstrates that the substance when released poses a potential threat to
19 human health or the environment.

20 § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO

21 TOXIC SUBSTANCES

1 **Option A: Independent Cause of Action**

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

6 **Option B: Consequential Damage**

7 (a) A person exposed to a toxic substance may recover medical monitoring
8 damages from a person who released a toxic substance if the release caused
9 physical injury to the exposed person or damage to property of the exposed
10 person and all of the following are demonstrated by a preponderance of the
11 evidence:

12 **Criteria for Award**

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

16 **Option C: Level of Exposure**

17 **Alt. 1: Simple exposure sufficient**

18 No increases level of exposure required. Simple exposure is enough. No
19 additional language required.

1 **Alt. 2. Exposure above background levels**

2 (2) The person was exposed to the toxic substance in an amount greater
3 than the level that the toxic substance is normally found in the environment.

4 (3) There is a probable link between exposure to the toxic substance and
5 a latent disease.

6 **Option D. Risk of Developing Disease**

7 **Alt. 1-Increased risk**

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

11 **Alt. 2—Risk greater than general public**

12 (4) As a result of the exposure, the person exposed to the toxic
13 substance has a greater risk of developing the latent disease than the general
14 public.

15 **Alt. 3—Significantly Increased risk**

16 (4) As a result of the exposure, the person exposed to the toxic
17 substance has a significantly increased risk of contracting the latent disease.

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

21 (6) Medical tests or procedures exist to detect the latent disease.

1 (c) A court shall place the award of medical monitoring damages into a
2 court-supervised program administered by a medical professional.

3 (d) If a court places an award of medical monitoring damages into a court-
4 supervised program pursuant to subsection (c) of this section, the court shall
5 also award attorney’s fees and costs to the plaintiff.

6 (e) Nothing in this chapter shall be deemed to preclude the pursuit of any
7 other civil or injunctive remedy available under statute or common law,
8 including the right of any person to recover for damages related to the
9 manifestation of a latent disease. The remedies in this chapter are in addition
10 to those provided by existing statutory or common law.

11 * * * Effective Date * * *

12 Sec. 3. EFFECTIVE DATE

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

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20 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE