

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, or
8 hunting or fishing equipment or components thereof.

9 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

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

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

18 (c) Nothing in this section shall be construed to supersede or diminish in
19 any way existing remedies available to a person or the State at common law or
20 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, or
10 hunting or fishing equipment or components thereof.

11 § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO
12 TOXIC SUBSTANCES

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

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 **Option B: Consequential Damage**

19 (a) A person exposed to a toxic substance may recover medical monitoring
20 damages from a person who released a toxic substance if the release caused
21 physical injury to the exposed person or damage to property of the exposed

1 person and all of the following are demonstrated by a preponderance of the
2 evidence:

3 **Criteria for Award**

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

7 **Option C: Level of Exposure**

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

9 No increases level of exposure required. Simple exposure is enough. No
10 additional language required.

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

12 (2) The person was exposed to the toxic substance in an amount greater
13 than the level at which the toxic substance is normally found in the
14 environment.

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

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

18 **Alt. 1-Increased risk**

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

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

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

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

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

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

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

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

14 (c) If a court places an award of medical monitoring damages into a court-
15 supervised program pursuant to subsection (c) of this section, the court shall
16 also award to the plaintiff **reasonable attorney's fees and other litigation costs**
17 **reasonably incurred.**

18 (d) Nothing in this chapter shall be deemed to preclude the pursuit of any
19 other civil or injunctive remedy available under statute or common law,
20 including the right of any person to recover for damages related to the

1 manifestation of a latent disease. The remedies in this chapter are in addition
2 to those provided by existing statutory or common law.

3 * * * Effective Date * * *

4 Sec. 3. EFFECTIVE DATE

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

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12 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE

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