

S.37

An act relating to medical monitoring

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Strict Liability; Toxic Substance Release * * *

Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

Subchapter 5. Strict Liability for Toxic Substance Release

§ 6685. DEFINITIONS

As used in this subchapter:

(1) “Establishment” means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, or governmental function.

(2) “Facility” means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(3) “Harm” means any personal injury or property damage.

(4) “Large facility” means a facility:

(A) where 10 or more full-time employees have been employed at any one time; or

(B)(i) where an activity within the Standard Industrial Classification code of 20 through 39 is conducted or was conducted; and

(ii) that is owned or operated by a person who, when all facilities or establishments that the person owns or controls are aggregated, has employed 500 employees at any one time.

(5) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; federal agency; or any other legal or commercial entity.

(6) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located.

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

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive

Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under section 6602 of this title or under rules adopted under this chapter;

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

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

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under this chapter; or

(vi) the substance can be shown by expert testimony to cause harm.

(B) “Toxic substance” shall not mean:

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

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

§ 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

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

(b) Any person held liable under subsection (a) of this section shall have the right to seek contribution from the manufacturer of the toxic substance that was released.

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

Sec. 2. REPEAL; STRICT LIABILITY FOR TOXIC SUBSTANCE
RELEASE

10 V.S.A. chapter 159, subchapter 5 (strict liability for toxic substance releases) shall be repealed on July 1, 2024.

Sec. 3. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON
INSURANCE POLICY PRICING AND AVAILABILITY

(a) The Commissioner of Financial Regulation shall monitor how the imposition of strict liability for toxic substance releases pursuant to 10 V.S.A. chapter 159, subchapter 5 affects the pricing and availability of commercial general liability insurance policies, residential homeowner's insurance policies,

and other insurance policies in the State. The Commissioner of Financial Regulation shall evaluate whether:

(1) insurance policies in the State are more expensive or less available due to the strict liability provisions of 10 V.S.A. chapter 159, subchapter 5; and

(2) the insurance market in the State is negatively affected in comparison to the national market solely due to the strict liability provisions of 10 V.S.A. chapter 159, subchapter 5.

(b) On or before January 15, 2020, and annually thereafter, the Commissioner of Financial Regulation shall report to the Senate Committee on Finance and the House Committee on Commerce and Economic Development the results of its evaluation under subsection (a) of this section.

* * * Medical Monitoring * * *

Sec. 4. 12 V.S.A. chapter 219 is added to read:

CHAPTER 219. MEDICAL MONITORING

§ 7201. DEFINITIONS

As used in this chapter:

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

(2) “Establishment” means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, or governmental function.

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

(4) “Facility” means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(5) “Large facility” means a facility:

(A) where 10 or more full-time employees have been employed at any one time; or

(B)(i) where an activity within the Standard Industrial Classification code of 20 through 39 is conducted or was conducted; and

(ii) that is owned or operated by a person who, when all facilities or establishments that the person owns or controls are aggregated, has employed 500 employees at any one time.

(6) “Medical monitoring” means a program of medical surveillance, including medical tests or procedures for the purpose of early detection of signs or symptoms of latent disease resulting from exposure.

(7) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the

State of Vermont or any agency, department, or subdivision of the State;
federal agency; or any other legal or commercial entity.

(8) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located.

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

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

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

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental

Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

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

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

(vi) exposure to the substance can be shown by expert testimony to increase the risk of developing a latent disease.

(B) "Toxic substance" shall not mean:

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

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

§ 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC

SUBSTANCES

(a) A person with or without a present injury or disease shall have a cause of action for the remedy of medical monitoring against a person who released a toxic substance from a large facility if all of the following are demonstrated by a preponderance of the evidence:

(1) The person was exposed to the toxic substance as a result of tortious conduct by the person who released the toxic substance.

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

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

(4) Diagnostic testing is reasonably necessary. Testing is reasonably necessary if a physician would recommend testing for the purpose of detecting or monitoring the latent disease based on the person's exposure.

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

(b) A person's present or past health status shall not be an issue in a claim for medical monitoring.

(c) If medical monitoring is awarded, a court shall order the liable person to fund a court-supervised medical monitoring program administered by one or more health professional.

(d) Upon an award of medical monitoring under subsection (c), the court shall award to the plaintiff reasonable attorney's fees and other litigation costs reasonably incurred.

(e) Nothing in this chapter shall be deemed to preclude the pursuit of any other civil or injunctive remedy available under statute or common law,

including the right of any person to recover for damages related to the manifestation of a latent disease. The remedies in this chapter are in addition to those provided by existing statutory or common law.

(f) This section does not preclude a court from certifying a class action for the remedy of medical monitoring.

* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2019.