

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 37
3 entitled “An act relating to medical monitoring damages” respectfully reports
4 that it has considered the same and recommends that the bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 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) “Establishment” means any premises used for the purpose of
13 carrying on or exercising any trade, business, profession, vocation, commercial
14 or charitable activity, or governmental function.

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

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

22 (4) “Large facility” means a facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

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

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

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

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

12 RELEASE

13 10 V.S.A. chapter 159, subchapter 5 (strict liability for toxic substance
14 releases) shall be repealed on July 1, 2024.

15 Sec. 3. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON

16 INSURANCE POLICY PRICING AND AVAILABILITY

17 (a) The Commissioner of Financial Regulation shall monitor how the
18 imposition of strict liability for toxic substance releases pursuant to 10 V.S.A.
19 chapter 159, subchapter 5 affects the pricing and availability of commercial
20 general liability insurance policies, residential homeowner’s insurance policies,
21 and other insurance policies in the State. The Commissioner of Financial
22 Regulation shall evaluate whether:

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

7 (5) “Large facility” means a facility:

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

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

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

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

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

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

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

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

14 (ii) the substance, mixture, or compound is defined as a
15 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under
16 10 V.S.A. chapter 159;

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

21 (iv) the Department of Health has issued a public health advisory
22 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) exposure to the substance can be shown by expert testimony
5 to increase the risk of developing a latent disease.

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 FOR EXPOSURE TO TOXIC

13 SUBSTANCES

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

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

1 (3) The person’s exposure to the toxic substance increases the risk of
2 developing a 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 recommend testing for the purpose of detecting
6 or monitoring the latent disease based on the person’s exposure.

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

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

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

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

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

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

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* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

and that after passage the bill be amended to read: “An act relating to medical
monitoring”

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE