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1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 37
3 entitled “An act relating to medical monitoring” respectfully reports that it has
4 considered the same and recommends that the House propose to the Senate that
5 the bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

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

8 ~~*** Strict Liability; Toxic Substance Release ***~~

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

10 ~~Subchapter 5. Strict Liability for Toxic Substance Release~~

11 ~~§ 6685. DEFINITIONS~~

12 ~~As used in this subchapter:~~

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

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

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1 ~~land, structures, other appurtenances, and improvements on the land owned by~~
2 ~~a municipality.~~

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

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

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

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

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

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

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

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- 1 ~~(7)(A) “Toxic substance” means any substance, mixture, or compound~~
2 ~~that has the capacity to produce personal injury or illness to humans through~~
3 ~~ingestion, inhalation, or absorption through any body surface and that satisfies~~
4 ~~one or more of the following:~~
- 5 ~~(i) the substance, mixture, or compound is listed on the U.S.~~
6 ~~Environmental Protection Agency Consolidated List of Chemicals Subject to~~
7 ~~the Emergency Planning and Community Right To Know Act, Comprehensive~~
8 ~~Environmental Response, Compensation and Liability Act, and Section 112(r)~~
9 ~~of the Clean Air Act;~~
- 10 ~~(ii) the substance, mixture, or compound is defined as a~~
11 ~~“hazardous material” under section 6602 of this title or under rules adopted~~
12 ~~under this chapter;~~
- 13 ~~(iii) testing has produced evidence, recognized by the National~~
14 ~~Institute for Occupational Safety and Health or the U.S. Environmental~~
15 ~~Protection Agency, that the substance, mixture, or compound poses acute or~~
16 ~~chronic health hazards;~~
- 17 ~~(iv) the Department of Health has issued a public health advisory~~
18 ~~for the substance, mixture, or compound;~~
- 19 ~~(v) the Secretary of Natural Resources has designated the~~
20 ~~substance, mixture, or compound as a hazardous waste under this chapter; or~~

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

3 ~~(B) “Toxic substance” shall not mean:~~

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

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

9 ~~§ 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES~~

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

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

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

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1 ~~Sec. 2. REPEAL; STRICT LIABILITY FOR TOXIC SUBSTANCE~~

2 ~~——— RELEASE~~

3 ~~10 V.S.A. chapter 159, subchapter 5 (strict liability for toxic substance~~
4 ~~releases) shall be repealed on July 1, 2024.~~

5 ~~Sec. 3. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON~~

6 ~~——— INSURANCE POLICY PRICING AND AVAILABILITY~~

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

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

15 ~~(2) the insurance market in the State is negatively affected in~~
16 ~~comparison to the national market solely due to the strict liability provisions of~~
17 ~~10 V.S.A. chapter 159, subchapter 5.~~

18 ~~(b) On or before January 15, 2020, and annually thereafter, the~~
19 ~~Commissioner of Financial Regulation shall report to the Senate Committee on~~

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1 ~~Finance and the House Committee on Commerce and Economic Development~~
2 ~~the results of its evaluation under subsection (a) of this section.~~

3 *** Medical Monitoring ***

4 Sec. 4. Sec. 1 12 V.S.A. chapter 219 is added to read:

5 CHAPTER 219. MEDICAL MONITORING

6 § 7201. DEFINITIONS

7 As used in this chapter:

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

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

13 (3) “Exposure” means ingestion, inhalation, or absorption through any
14 body surface.

15 (4) “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.

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

2 ~~(A) where 10 or more full-time employees have been employed at~~

3 ~~any one time; or~~

4 ~~(B)(i) where an activity within the Standard Industrial Classification~~

5 ~~code of 20 through 39 is conducted or was conducted; and~~

6 ~~(ii) that is owned or operated by a person who, when all facilities~~

7 ~~or establishments that the person owns or controls are aggregated, has~~

8 ~~employed 500 employees at any one time.~~

9 ~~(A) where an activity within the Standard Industrial Classification~~

10 ~~code of 20 through 39 within a Standard Industrial Classification code of 10~~

11 ~~through 14, 20 through 39, 40 through 42, 44 through 46, or 49 is conducted or~~

12 ~~was conducted; and~~

13 ~~(B)(i) where 10 or more full-time employees have been employed at~~

14 ~~any one time; or~~

15 ~~(ii) that is owned or operated by a person who, when all facilities~~

16 ~~or establishments that the person owns or controls are aggregated, has~~

17 ~~employed 500 employees at any one time.~~

18 (6) “Medical monitoring” means a program of ~~medical surveillance~~

19 ~~tests, including~~ medical tests or procedures for the purpose of early detection

20 of signs or symptoms of a latent disease resulting from exposure.

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1 (7) “Operator” means a person who manages, conducts, or directs the
2 operations of a facility.

3 (8) “Owner” means a person who owns or controls a facility. “Owner”
4 shall not mean a person who without participating in the management of the
5 large facility holds indicia of ownership primarily to protect a security interest.

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

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

14 (11) “Tortious conduct” means negligence, trespass, nuisance, product
15 liability, or common law liability for ultra-hazardous or abnormally dangerous
16 activity.

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

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

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

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

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

18 (vi) (F) exposure to the substance is shown by expert testimony to
19 increase the risk of developing a latent disease.

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

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

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

6 § 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC

7 SUBSTANCES

8 (a) A person without a present injury or disease shall have a cause of action
9 for the remedy of medical monitoring against a person who is the owner or
10 operator of a large facility from which a toxic substance was released if all of
11 the following are demonstrated by a preponderance of the evidence:

12 (1) The person was exposed to the toxic substance as a result of tortious
13 conduct by the owner or operator, or persons under the control of the owner or
14 operator, who released the toxic substance.

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

17 (3) (2) As a proximate result of the exposure, the person has a greater
18 risk of contracting a latent disease. A person does not need to prove that the
19 latent disease is certain or likely to develop as a result of the exposure.

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1 ~~(4)~~ (3) Diagnostic testing is reasonably necessary. Testing is reasonably
2 necessary if, shown by expert testimony, a physician would recommend testing
3 for the purpose of detecting or monitoring the latent disease based on the
4 person's exposure would prescribe diagnostic testing because the person's
5 increased risk of contracting the disease due to the exposure makes it
6 reasonably necessary to undergo diagnostic testing different from what would
7 normally be prescribed in the absence of the exposure.

8 ~~(5)~~ (4) Medical tests or procedures exist to detect the latent disease.

9 (b) If the cost of medical monitoring is awarded, a court shall order the
10 liable person to fund defendant found liable to pay the award to a court-
11 supervised medical monitoring program administered by:

12 (1) one or more health professionals;

13 (2) the Department of Health; or

14 (3) another appropriate entity.

15 (c) Upon an award of medical monitoring under subsection (b), the court
16 shall 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 or defense available under statute or common
20 law, including the right of any person to seek to recover for damages related to

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

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

5 (e) This section shall not increase the rights and remedies available under
6 21 V.S.A. chapter 9 to an employee who suffers a personal injury by accident
7 arising out of and in the course of employment, provided that 21 V.S.A.
8 chapter 9 shall not limit the right of a person who has not suffered a personal
9 injury by accident arising out of and in the course of employment to bring a
10 cause of action for medical monitoring.

11 Sec. 2. APPLICATION TO EXPOSURES PRIOR TO EFFECTIVE DATE

12 Notwithstanding 1 V.S.A. § 214, the right of a person to bring a cause of
13 action for medical monitoring under 12 V.S.A. chapter 219 shall apply
14 retroactively to an exposure to a toxic substance that was discovered by the
15 person in the six years prior to July 1, 2019, irrespective of any statute of
16 limitations in effect at the time of the discovery of the exposure.

17 ~~Sec. 5.~~ Sec. 3. EFFECTIVE DATE

18 This act shall take effect on July 1, 2019.