

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

8 CHAPTER 219. MEDICAL MONITORING

9 § 7201. DEFINITIONS

10 As used in this chapter:

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

13 (2) “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 (3) “Exposure” means ingestion, inhalation, or absorption through any
17 body surface.

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

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

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

4 (A) where an activity within a Standard Industrial Classification code
5 of 10 through 14, 20 through 39, 40 through 42, 44 through 46, or 49 is
6 conducted or was conducted; and

7 (B)(i) where 10 or more full-time employees have been employed at
8 any one time; or

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

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

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

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

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

3 (10) “Release” means any act or omission that allows a toxic substance
4 to enter the air, land, surface water, or groundwater.

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

8 (12) “Toxic substance” means any substance, mixture, or compound that
9 may cause personal injury or disease to humans through ingestion, inhalation,
10 or absorption through any body surface and that satisfies one or more of the
11 following:

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

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

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

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

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

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

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

9 § 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC

10 SUBSTANCES

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

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

18 (2) As a proximate result of the exposure, the person has a greater risk
19 of contracting a latent disease.

20 (3) Diagnostic testing is reasonably necessary. Testing is reasonably
21 necessary if, shown by expert testimony, a physician would prescribe

1 diagnostic testing because the person’s increased risk of contracting the disease
2 due to the exposure makes it reasonably necessary to undergo diagnostic
3 testing different from what would normally be prescribed in the absence of the
4 exposure.

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

6 (b) If the cost of medical monitoring is awarded, a court shall order the
7 defendant found liable to pay the award to a court-supervised medical
8 monitoring program administered by:

9 (1) one or more health professionals;

10 (2) the Department of Health; or

11 (3) another appropriate entity.

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

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

20 (e) This section shall not increase the rights and remedies available under
21 21 V.S.A. chapter 9 to an employee who suffers a personal injury by accident

1 arising out of and in the course of employment, provided that 21 V.S.A.
2 chapter 9 shall not limit the right of a person who has not suffered a personal
3 injury by accident arising out of and in the course of employment to bring a
4 cause of action for medical monitoring.

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

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

11 Sec. 3. EFFECTIVE DATE

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

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17 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE