

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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~~

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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.~~

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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.~~

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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~~

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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 caused by 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.

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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

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

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

12 (7) “Operator” means a person who controlled activities at a large

13 facility immediately prior to a release.

14 (8) “Owner” means a person who owns title to a large facility. “Owner”

15 shall not mean a person who without participating in the management of the

16 large facility holds indicia of ownership primarily to protect a security interest.

17 (9) “Person” means any individual; partnership; company; corporation;

18 association; unincorporated association; joint venture; trust; municipality; the

19 State of Vermont or any agency, department, or subdivision of the State;

20 federal agency; or any other legal or commercial entity.

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

1 (10) “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, or groundwater, or any other place where the toxic substance
4 may be located.

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

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

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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

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

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

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

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

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

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

18 § 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC

19 SUBSTANCES

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

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

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

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

10 (3) (2) As a proximate result of the exposure, the person has a greater
11 risk than the general public of contracting a latent disease. A person does not
12 need to prove that the latent disease is certain or likely to develop as a result of
13 the exposure.

14 (4) (3) Diagnostic testing is reasonably necessary. Testing is reasonably
15 necessary if, shown by expert testimony, a physician would recommend testing
16 for the purpose of detecting or monitoring the latent disease based on the
17 person's exposure would prescribe diagnostic testing because the person's
18 increased risk of contracting the disease due to the exposure makes it
19 reasonably necessary to undergo diagnostic testing different from what would
20 normally be prescribed in the absence of the exposure.

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

1 ~~(5)~~ (4) Medical tests or procedures exist to detect the latent disease.

2 (b) If the cost of medical monitoring is awarded, a court shall order the

3 liable person to fund defendant found liable to pay the award to a court-

4 supervised medical monitoring program administered by one or more health

5 professional.

6 (c) Upon an award of medical monitoring under subsection (c), the court

7 shall award to the plaintiff reasonable attorney's fees and other litigation costs

8 reasonably incurred.

9 (d) Nothing in this chapter shall be deemed to preclude the pursuit of any

10 other civil or injunctive remedy or defense available under statute or common

11 law, including the right of any person to seek to recover for damages related to

12 the manifestation of a latent disease. The remedies and defenses in this chapter

13 are in addition to those provided by existing statutory or common law.

14 ~~(f) This section does not preclude a court from certifying a class action for~~

15 ~~the remedy of medical monitoring.~~

16 (e) This section shall not increase the rights and remedies available under

17 21 V.S.A. chapter 9 to an employee who suffers a personal injury by accident

18 arising out of and in the course of employment, provided that 21 V.S.A.

19 chapter 9 shall not limit the right of a person who has not suffered a personal

Annotated Copy

Highlighting = Changes to Senate Passed Bill on 4/23/19

Highlighting = Changes to Senate Passed Bill between 4/23 and 5/1/19

1 injury by accident arising out of and in the course of employment to bring a
2 cause of action for medical monitoring.

3 **Sec. 2. APPLICATION TO EXPOSURES PRIOR TO EFFECTIVE DATE**

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

9 ~~Sec. 5.~~ **Sec. 3. EFFECTIVE DATE**

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