

**SENATE BILL 37**

*New Liability for Toxic Substance Exposure*

**STATEMENT OF OPPOSITION**

*To the Vermont House Judiciary Committee*

April 2019

On behalf of National Association of Mutual Insurance Companies (NAMIC)<sup>1</sup> members, thank you for the opportunity to express strong opposition to Senate Bill 37.<sup>2</sup> This bill would create a new legal right to damages for exposure-only situations in which people are not sick currently and they may never become sick in the future.

This bill may pave an route for future abuse - it appears to allow for recovery with only **tenuous connections**. For example, consider bill wording (emphasis added):

- × ... poses a potential or actual threat to human health
- × ... with or without a present injury or disease shall have a cause of action
- × ... any disease, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance
- × ... a probable link between exposure to the toxic substance and a latent disease
- × ... can be shown by expert testimony to pose a potential threat [no meaningful or threshold amount or dose]
- × ... need not prove that the latent disease is certain or likely to develop as a result of the exposure

The legal system is typically premised on actual and verified harm which generally is to be compensated where a party is found to be at fault and legally liable (usually through a negligence standard). Unfortunately, under this bill, the cause-effect relationship is missing. Consider possible results – on local businesses – if everyday items not generally considered toxic are swept into a long-term monitoring obligation.

Medical monitoring damages that are based on more tenuous connections may **needlessly exhaust resources** that might not be there when needed to pay claimants for actual harm. For example, consider situations in which a medical monitoring award for masses of individuals with an accompanying attorney fees award may cause companies to file for federal bankruptcy protection. In those situations, while parties may receive initial medical surveillance, ultimately there may not be assets for injuries that manifest themselves.

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In closing, NAMIC thanks the Committee for considering the concerns of and consequences for all interested parties and NAMIC asks the Committee to weigh the negative impacts this legislation may have on Vermont, its insurance policyholders, and its overall business community and to **vote no to Senate Bill 37**. Thank you.

<sup>1</sup> NAMIC is the largest property/casualty trade association in the US, servicing regional and local mutual insurance companies on main streets across America as well as many large national insurers. NAMIC consists of more than 1,400 property/casualty insurance companies serving more than 170 million auto, home, and business policyholders, with more than \$230 billion in premiums. In Vermont, NAMIC members write about 48% of the property-casualty insurance market.

<sup>2</sup> <https://legislature.vermont.gov/Documents/2020/Docs/BILLS/S-0037/S-0037%20As%20Introduced.pdf>