



# Central Vermont Chamber of Commerce

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*Responsibly Improving the Climate for Doing Business in the Central Vermont Community.*

Statement Before  
Vermont General Assembly  
House Committee on Judiciary  
Presented by  
William D. Moore  
Central Vermont Chamber of Commerce  
March 21, 2019

RE: S 37, An Act Relating to Medical Monitoring Damages

Representative Grad, Honorable Members of the House Committee on Judiciary . . .

My name is William D. Moore. I am the President and CEO of the Central Vermont Chamber of Commerce. The Central Vermont Chamber of Commerce is the largest business organization serving Washington County and a portion of Orange County. Our diverse membership consists of some of the largest businesses in Vermont as well sole proprietorships. Virtually every sector of Vermont's economy is represented in our membership.

Thank you for the opportunity to be before you today to discuss issues concerning S 37, An Act Relating to Medical Monitoring Damages.

We have several concerns about the proposed legislation.

The Central Vermont Chamber of Commerce believes that all businesses should comply with all laws. We believe that all companies should be operating with strict attention to safety for their employees, the public and the environment. We are concerned, however, that this Act may impose severe future penalties on companies who are in compliance with existing laws and regulations.

The proposed definitions for Subchapter 5 are very concerning.

Section (4)(A) defines a “large facility as a facility “where 10 or more full-time have been employed at any one time.” Does this mean that if at one time the facility had eleven employees but at the time of the release there were nine employees that the facility comes under the Act?

Section (7)(A) declares that “any substance, mixture or compound that has the capacity to produce personal injury or illness” and meets certain criteria is toxic. The criteria contained in subsections (i) through (vi) are so broad that they could include virtually any “substance, mixture or compound” in use today. Under the current language, it is apparent and troubling that those who use substances that are deemed safe today would be held liable in the future should those substances be deemed to be toxic at some unknown time in the future.

We are very concerned that the bill that creates strict liability for damage to property and human health for the release of harmful substance into the environment. In other words, by simply using the substance, following the manufacturer’s explicit directions, and using the substance in a legally permitted manner, the user accepts absolute liability and responsibility for harm that may or may not be caused.

We have several concerns regarding the issue of medical monitoring.

We are also concerned that someone who, following the constraints contained in a permit is liable for costs associated with medical monitoring regardless of whether or not there is “a present injury or disease.” This becomes even more problematic when one considers that the Act does not require an individual to prove “disease is certain or likely to develop as a result of the exposure.” Testimony has been presented to the Senate Judiciary Committee and is likely to be repeated here that the act is not intended to hurt small business, the “mom and pop stores.” Unfortunately, this Act will have a severe detrimental effect on all businesses, large and small.

We are concerned that there is no measure of how much exposure the individual had to the hazardous substance that would lead a reasonable person to conclude that they are at risk of disease.

The definitions contained in Chapter 219 §7201, put many small – and large – businesses at risk. §7202 is even more concerning.

§7202(3) provides “The person’s exposure to the toxic substance increases the risk of developing the latent disease. A person does not need to prove that the latent disease is certain or likely to develop as a result of the exposure.” There is no limit on the amount of exposure necessary, only “Exposure” as defined in §7201.

§7201(4) “Diagnostic testing is reasonably necessary. Testing is reasonably necessary if a physician would prescribe testing for the purpose of detecting or monitoring the latent disease.” This section is somewhat circular. Testing is necessary if it is needed to diagnose a disease or the presence of a medical issue. The diagnosis cannot reasonably be made without testing if the patient brings no complaint, only a concern that at some time they were exposed to an amount of presumed hazardous or toxic substance. Therefore, diagnostic testing will always be necessary.

Many businesses use window cleaners. Most of the contents of those window cleaners meet the definition of being hazardous or toxic as defined by the Act. Should a business be liable for medical monitoring for those who may have inhaled the spray from the bottle?

Whenever one smells gasoline while fueling their vehicle, that person is being exposed to hazardous and toxic substances as defined by this Act. Should the owner of the general store with a fuel pump be liable for medical monitoring?

Hair salons and nail salons use chemicals that could be deemed hazardous or toxic as defined by the Act. Should those owners be liable for medical monitoring?

These are the implications of the Act before you.

I have spoken with insurance underwriters who have told me that these conditions will make it virtually impossible to obtain insurance for companies that use chemicals in their normal operations. Lenders have told me the same thing regarding financing.

In short, enactment of S37 could have a chilling effect on any development, investment or business expansion in Vermont.

We believe that enactment of S37 will cause an unfair, undue burden on those who today are acting in a lawful permitted way; who are acting in a manner allowed by the state; who are acting pursuant to current statutes and regulations.

Those who do suffer harm due to exposure to toxic and/or hazardous substances already have remedies for relief in existing statutes and case law.

Finally, we are somewhat confused by the language contained in Section 2, "REPEAL; STRICT LIABILITY FOR TOXIC SUBSTANCE RELEASE."

The language related to strict liability shall sunset on July 1, 2024. Since strict liability shall be repealed after 5 years, it begs the question, why is it even necessary? Will exposure, to "Releases" as defined in the Act cease as of that date? If strict liability sunsets in 2024, then strict liability should be removed entirely from the measure before you today.

We respectfully urge the Committee to reject S 37, An Act Relating to Medical Monitoring Damages.

Thank you for the opportunity to present these comments to the Committee. I will be happy to respond to any questions that you may have.