

Testimony on S.37
House Committee on Judiciary
Chris Carrigan, Vice President Business Development
March 21, 2019

Dear Chair Grad and Members of the House Judiciary Committee:

The statewide Vermont Chamber of Commerce represents 1,500 members, the vast majority being small businesses, from all industries and sectors of Vermont's business and manufacturing community. Informed by consistent engagement and dialogue with our diverse membership, we maintain an informed perspective on issues impacting Vermont's economy. After carefully considering the concerns of our manufacturing members, the Vermont Chamber of Commerce cannot help but oppose S.37.

Pertaining to S.37, a bill as passed by the Senate and regarding strict liability and medical monitoring damages, the Vermont Chamber is concerned by the wide-ranging impact on and risk to our manufacturers regarding the potential liabilities for personal injury, property damage and medical monitoring costs.

The Vermont Chamber's concerns are several and include:

Broad liability, including the definition of:

- 1.** Release, which includes "**permitted**" release. Even in the absence of wrongdoing, a permitted business following the law and in compliance with federal and state regulations is at an increased risk under S.37's broad scope of liability.

Recommendation: "Permitted release" should be excluded from the bill. The inclusion of permitted omissions would open manufacturers to penalties as a result of compliance with existing law. As written, the bill makes little distinction between legal and illegal activity as it relates to proposed liabilities.

- 2.** Medical monitoring damages for exposure to toxic substances, which includes a person "without" a present injury or disease.

Recommendation: Strike “without” and strike the strict liability standard and amend the bill to recognize claims for medical monitoring based on negligence.

3. Regarding the level of exposure,

Recommendations:

A plaintiff should have to demonstrate that their exposure to a chemical is different than the general public in order to be entitled to medical monitoring and that exposure to chemicals should be above background levels.

The threshold for the risk of developing a latent disease should be defined as a “**significantly increased risk**” above that faced by the general public.

With such broad liability, S.37 puts our manufacturers at significant risk for increased claims, insurance rates and premiums, legal and litigation costs, as well as added layers of administration and complexity. Combined with uncertainty, added costs, in return, will place our manufacturers at a competitive disadvantage regionally, nationally and globally and will potentially result in reactionary measures, such as:

- Price increases;
- Reduced investments in product research, development and innovation;
- Salary reductions;
- Workforce reductions;
- Business closure; and
- Out-of-state relocation.

In closing, the statewide Vermont Chamber of Commerce opposes S.37 and asks that the current version be amended with the above recommendations and to acknowledge our many manufacturers that operate in compliance with existing state and federal laws and that are responsible, environmental leaders providing Vermonters with employment and a high standard of living.