

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 37
3 entitled “An act relating to medical monitoring damages” respectfully reports
4 that it has considered the same and recommends that the bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 following:

7 * * * Strict Liability; Toxic Substance Release * * *

8 Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

9 Subchapter 5. Strict Liability for Toxic Substance Release

10 § 6685. DEFINITIONS

11 As used in this subchapter:

12 (1) “Facility” means all contiguous land, structures, other
13 appurtenances, and improvements on the land where toxic substances are
14 manufactured, processed, used, or stored. A facility may consist of several
15 treatment, storage, or disposal operational units. A facility shall not include
16 land, structures, other appurtenances, and improvements on the land owned by
17 a municipality.

18 (2) “Harm” means any personal injury or property damage.

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

20 (A) where the equivalent of 10 or more full-time employees have
21 been employed at any one time; or

1 (B)(i) the facility’s owner or operators has employed at least 500 full-
2 time employees at any one time; and

3 (ii) is within Standard Industrial Classification code of 20 through
4 39.

5 (4) “Person” means any individual; partnership; company; corporation;
6 association; unincorporated association; joint venture; trust; municipality; the
7 State of Vermont or any agency, department, or subdivision of the State;
8 federal agency; or any other legal or commercial entity.

9 (5) “Release” means any intentional or unintentional, permitted or
10 unpermitted, act or omission that allows a toxic substance to enter the air, land,
11 surface water, groundwater, or any other place where the toxic substance may
12 be located.

13 (6)(A) “Toxic substance” means any substance, mixture, or compound
14 that has the capacity to produce personal injury or illness to humans through
15 ingestion, inhalation, or absorption through any body surface and that satisfies
16 one or more of the following:

17 (i) the substance, mixture, or compound is listed on the U.S.
18 Environmental Protection Agency Consolidated List of Chemicals Subject to
19 the Emergency Planning and Community Right-To-Know Act, Comprehensive
20 Environmental Response, Compensation and Liability Act, and Section 112(r)
21 of the Clean Air Act;

1 (ii) the substance, mixture, or compound is defined as a
2 “hazardous material” under section 6602 of this title or under rules adopted
3 under this chapter;

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

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

10 (v) the Secretary of Natural Resources has designated the
11 substance, mixture, or compound as a hazardous waste under this chapter; or

12 (vi) the substance can be shown by expert testimony to cause
13 harm.

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

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

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

20 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

1 (a) Any person who releases a toxic substance from a large facility shall be
2 held strictly, jointly, and severally liable for any harm resulting from the
3 release.

4 (b) Any person held liable under subsection (a) of this section shall have
5 the right to seek contribution from the manufacturer of the toxic substance that
6 was released.

7 (c) Nothing in this section shall be construed to supersede or diminish in
8 any way existing remedies available to a person or the State at common law or
9 under statute.

10 Sec. 2. DEPARTMENT OF FINANCIAL REGULATION; REPORT ON
11 INSURANCE POLICY PRICING AND AVAILABILITY

12 (a) The Commissioner of Financial Regulation shall monitor how the
13 imposition of strict liability for toxic substance releases pursuant to 10 V.S.A.
14 chapter 159, subchapter 5 affects the pricing and availability of commercial
15 general liability insurance policies, residential homeowner’s insurance policies,
16 and other insurance policies in the State. The Commissioner of Financial
17 Regulation shall evaluate whether:

18 (1) insurance policies in the State are more expensive or less available
19 due to the strict liability provisions of 10 V.S.A. chapter 159, subchapter 5; and

20 (2) the insurance market in the State is negatively affected in
21 comparison to the national market solely due to the strict liability provisions of
22 10 V.S.A. chapter 159, subchapter 5.

1 (B)(i) the facility’s owner or operators has employed at least 500 full-
2 time employees at any one time; and

3 (ii) is within Standard Industrial Classification code of 20 through
4 39.

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

8 (6) “Person” means any individual; partnership; company; corporation;
9 association; unincorporated association; joint venture; trust; municipality; the
10 State of Vermont or any agency, department, or subdivision of the State;
11 federal agency; or any other legal or commercial entity.

12 (7) “Release” means any intentional or unintentional, permitted or
13 unpermitted, act or omission that allows a toxic substance to enter the air, land,
14 surface water, groundwater, or any other place where the toxic substance may
15 be located.

16 (8)(A) “Toxic substance” means any substance, mixture, or compound
17 that has the capacity to produce personal injury or illness to humans through
18 ingestion, inhalation, or absorption through any body surface and that satisfies
19 one or more of the following:

20 (i) the substance, mixture, or compound is listed on the U.S.
21 Environmental Protection Agency Consolidated List of Chemicals Subject to
22 the Emergency Planning and Community Right-To-Know Act, Comprehensive

1 Environmental Response, Compensation and Liability Act, and Section 112(r)
2 of the Clean Air Act;

3 (ii) the substance, mixture, or compound is defined as a
4 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under
5 10 V.S.A. chapter 159;

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

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

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

15 (vi) exposure to the substance can be shown by expert testimony
16 to increase the risk of developing a latent disease.

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

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

20 (ii) ammunition or components thereof, firearms, air rifles,
21 discharge of firearms or air rifles, or hunting or fishing equipment or
22 components thereof.

1 § 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC
2 SUBSTANCES

3 (a) A person with or without a present injury or disease shall have a cause
4 of action for medical monitoring against a large user of toxic substances who
5 released a toxic substance if all of the following are demonstrated by a
6 preponderance of the evidence:

7 (1) The person was exposed to the toxic substance as a result of tortious
8 conduct by the large user of toxic substances who released the toxic substance.

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

11 (3) The person's exposure to the toxic substance increases the risk of
12 developing the latent disease. A person does not need to prove that the latent
13 disease is certain or likely to develop as a result of the exposure.

14 (4) Diagnostic testing is reasonably necessary. Testing is reasonably
15 necessary if a physician would prescribe testing for the purpose of detecting or
16 monitoring the latent disease.

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

18 (b) A person's present or past health status shall not be an issue in a claim
19 for medical monitoring.

20 (c) If medical monitoring is awarded, a court shall order the liable person to
21 fund a court-supervised medical monitoring program administered by one or
22 more health professional.

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Senator _____

FOR THE COMMITTEE