

S.37

Introduced by Senators Campion, Sears, and Bray

Referred to Committee on

Date:

Subject: Conservation and development; judiciary; toxic substances; strict liability; medical monitoring damages

Statement of purpose of bill as introduced: This bill proposes to hold any person who releases a toxic substance strictly, jointly, and severally liable for any harm resulting from the release. The bill also proposes to establish a private right of action for medical monitoring damages incurred due to exposure to a toxic substance.

An act relating to medical monitoring damages

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* Strict Liability; Toxic Substance Release \* \* \*

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

Subchapter 5. Strict Liability for Toxic Substance Release

§ 6685. DEFINITIONS

As used in this subchapter:

(1) "Harm" means any personal injury or property damage.

1           (2) “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, groundwater, or any other place where the toxic substance may  
4           be located in one or more of the following amounts:

5                   (A) more than two gallons or pounds;

6                   (B) two gallons or pounds or less if the amount released poses a  
7           potential or actual threat to human health; or

8                   (C) for any toxic substance regulated under the Comprehensive  
9           Environmental Response, Compensation, and Liability Act, 42 U.S.C.  
10           §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R.  
11           § 302.4.

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

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

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

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

13                   (i) a pesticide regulated by the Secretary of Agriculture, Food and  
14                   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                  § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

19                   (a) Any person who releases a toxic substance shall be held strictly, jointly,  
20                   and severally liable for any harm resulting from the release.

1        (b) Any person held liable under subsection (a) of this section shall have  
2        the right to seek contribution from any other person who caused or contributed  
3        to the release. The right to contribution under this subsection shall include the  
4        right to seek contribution from a chemical manufacturer that released a toxic  
5        substance when a court determines that the manufacturer failed to warn a  
6        person of a toxic substance's propensity to cause the harm complained of.

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

1           (2) the insurance market in the State is negatively affected in  
2           comparison to the national market solely due to the strict liability provisions of  
3           10 V.S.A. chapter 159, subchapter 5.

4           (b) On or before January 15, 2020, and annually thereafter, the  
5           Commissioner of Financial Regulation shall report to the Senate Committee on  
6           Finance and the House Committee on Commerce and Economic Development  
7           the results of its evaluation under subsection (a) of this section.

8                               \* \* \* Medical Monitoring Damages \* \* \*

9           Sec. 3. 12 V.S.A. chapter 219 is added to read:

10                           CHAPTER 219. MEDICAL MONITORING DAMAGES

11                   § 7201. DEFINITIONS

12                   As used in this chapter:

13                   (1) “Disease” means any disease, ailment, or adverse physiological or  
14                   chemical change linked with exposure to a toxic substance.

15                   (2) “Exposure” means ingestion, inhalation, contact with the skin or  
16                   eyes, or any other physical contact.

17                   (3) “Medical monitoring damages” means the cost of medical tests or  
18                   procedures and related expenses incurred for the purpose of detecting latent  
19                   disease resulting from exposure.

20                   (4) “Release” means any intentional or unintentional, permitted or  
21                   unpermitted, act or omission that allows a toxic substance to enter the air, land,

1 surface water, groundwater, or any other place where the toxic substance may  
2 be located in one or more of the following amounts:

3 (A) more than two gallons or pounds;

4 (B) two gallons or pounds or less if the amount released poses a  
5 potential or actual threat to human health; or

6 (C) for any toxic substance regulated under the Comprehensive  
7 Environmental Response, Compensation, and Liability Act, 42 U.S.C.  
8 §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R.  
9 § 302.4.

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

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

19 (ii) the substance, mixture, or compound is defined as a  
20 “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under  
21 10 V.S.A. chapter 159;

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) the substance, when released, can be shown by expert  
11                  testimony to pose a potential threat to human health or the environment.

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 DAMAGES FOR EXPOSURE TO  
19                  TOXIC SUBSTANCES

20                  (a) A person with or without a present injury or disease shall have a cause  
21                  of action for medical monitoring damages against a person who released a

1 toxic substance if all of the following are demonstrated by a preponderance of  
2 the evidence:

3 (1) The person was exposed to the toxic substance as a result of tortious  
4 conduct by the person who released the toxic substance, including conduct that  
5 constitutes negligence, battery, strict liability, trespass, or nuisance.

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

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

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

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

15 (b) A court shall place the award of medical monitoring damages into a  
16 court-supervised program administered by a medical professional.

17 (c) If a court places an award of medical monitoring damages into a court-  
18 supervised program pursuant to subsection (b) of this section, the court shall  
19 also award to the plaintiff reasonable attorney's fees and other litigation costs  
20 reasonably incurred.



6        (e) This section does not preclude a court from certifying a class action for  
7        medical monitoring damages.

9           Sec. 4. EFFECTIVE DATE

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