

1 S.197

2 Introduced by Senators Campion and Sears

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; judiciary; toxic substances; strict
6 liability for releases; medical monitoring damages

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

12 An act relating to liability for toxic substance exposures or releases

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

14 * * * Strict Liability; Toxic Substance Release * * *

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

16 Subchapter 5. Strict Liability for Toxic Substance Release

17 § 6685. DEFINITIONS

18 As used in this subchapter:

19 (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.

5 (3) “Toxic substance” means any substance identified as toxic or
6 hazardous under State or federal law, or mixture thereof, or any other
7 substance that has been shown at any time to cause increased risk of disease.

8 § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

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

11 (b) Any person held liable under subsection (a) of this section shall have
12 the right to seek contribution from any other person who caused or contributed
13 to the release. The right to contribution under this subsection shall include the
14 right to seek contribution from a chemical manufacturer that failed to warn a
15 person of a toxic substance’s propensity to cause the harm complained of.

16 (c) Nothing in this section shall be construed to supersede or diminish in
17 any way existing remedies available to a person at common law or under
18 statute.

1 * * * Medical Monitoring Damages * * *

2 Sec. 2. 12 V.S.A. chapter 219 is added to read:

3 CHAPTER 219. MEDICAL MONITORING DAMAGES

4 § 7201. DEFINITIONS

5 As used in this chapter:

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

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

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

13 (4) “Toxic substance” means any substance identified as toxic or
14 hazardous under State or federal law, or mixture thereof, or any other
15 substance that has been shown at any time to cause increased risk of disease.

16 § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO
17 TOXIC SUBSTANCES

18 (a) Any person may recover medical monitoring damages from exposure to
19 a toxic substance resulting from another’s tortious conduct with or without a
20 present injury or disease.

1 (b) To recover medical monitoring damages, a person must prove by a
2 preponderance of the evidence each of the following:

3 (1) The person was exposed to a toxic substance.

4 (2) There is a probable link between exposure to the toxic substance and
5 a disease or diseases.

6 (3) The person's exposure is the result of another's tortious conduct,
7 including negligence, battery, strict liability, trespass, and nuisance.

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

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

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

15 (c) A court shall either place the award of medical monitoring damages into
16 a court-supervised program administered by a medical professional or award
17 lump sum damages.

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

1 (e) Nothing in this chapter shall be deemed to preclude the pursuit of any
2 other civil or injunctive remedy available under statute or common law,
3 including the right of any person to recover for damages related to the
4 manifestation of a latent disease. The remedies in this chapter are in addition
5 to those provided by existing statutory or common law.

6 * * * Effective Date * * *

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2018.