



Central Vermont Chamber of Commerce

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Statement Before
Vermont General Assembly
Senate Committee on Judiciary

Presented by
William D. Moore
Central Vermont Chamber of Commerce
February 5, 2019

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

Senator Sears, Honorable Members of the Senate 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 today.

Sec. 1. 10 V.S.A. Chapter 159 §6685 (3), provides that “‘Toxic substance’ means any substance identified as toxic or hazardous under State or federal law, or mixture thereof, or any other substance that has been shown at any time to cause increased risk of disease.”

The phrase “at any time” is troubling. This section would hold a company or individual that is acting properly, in a lawful manner, within the confines of a properly issued permit, following the protocol for use of the substance in question, liable for using something that may, five, ten twenty or more years from now be deemed to be “toxic” or “hazardous.”



The proposed definitions for Subchapter 5 are even more concerning.

Section (3)(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 (v) are so broad that they could include virtually any "substance, mixture or compound" in use today.

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 and provides few of the legal defenses available under other environmental law statutes. Again, it is troubling that those who uses 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 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 this committee 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. Monitoring is necessary if it is necessary to diagnose a disease. 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.

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. You have already heard testimony to that effect. 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. 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.