

PHILIP B. SCOTT
Governor



State of Vermont
OFFICE OF THE GOVERNOR

May 22, 2018

The Honorable John Bloomer, Jr.
Secretary of the Senate
115 State Street
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.197, *An act relating to liability for toxic substance exposures or releases*, without my signature because of my objections described herein:

The State has taken clear and decisive action since the discovery of PFOA in the drinking water of Bennington and North Bennington in 2016 to address this public health crisis, hold the responsible parties accountable, and provide stronger protections against this happening again. This includes the enactment of Act 55 of 2017, which I proudly signed in to law last June. Act 55 has helped strengthen the State's response to PFOA contamination by establishing a process to hold parties that contaminate groundwater responsible for connecting impacted Vermonters to municipal water. We will continue to stand with the affected communities, and act forcefully, until we reach a complete resolution for those affected. So far this has resulted in one settlement agreement which provides a substantial although partial resolution. This case will be completely resolved either through an additional settlement agreement or as a result of litigation. Either way, the polluter will be held responsible for the contamination, the cleanup, and for the health and well-being of Vermonters.

No community should have to endure what the impacted communities are going through. The patience and perseverance of these communities, as we work together to resolve this crisis, has been amazing. We will continue to ensure all Vermonters have clean drinking water.

I recognize the intent of this bill is to help ensure those exposed to harmful chemicals, like PFOA, can access financial resources for medical monitoring to increase early detection, diagnosis, and treatment of diseases that may occur because of such exposure. However, it is important to note that there is nothing that currently keeps an individual from seeking judicial recourse to gain medical monitoring from an entity. The level of liability this legislation creates for Vermont businesses is unprecedented and counter to my Administration's goal to make Vermont more affordable.

The level of liability and uncertainty this legislation creates for employers could prove catastrophic for Vermont's fragile economy and the bill establishes a standard that does not exist anywhere else in the country. Under the extremely broad definitions within S.197, any individual exposed to a chemical—who

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may have an indistinguishable change in risk compared to the general public—would be able to receive unlimited medical monitoring, without any proof that a medical condition is even likely to develop due to the exposure.

Put simply, enacting this bill would sacrifice provable and scientific evidence in favor of claims that are speculative, conceptual, abstract, and subject to very low levels of proof. Employers—law-abiding members of our communities who want to do what is best for their employees and our state—would see their liabilities skyrocket overnight, courts could find themselves loaded with claims, and insurance companies and markets would be stressed. Costs would rise for employers, and consumers. And Vermont would become a substantially less attractive place to create jobs and run a business. Some employers—including many we've heard from—might have reason to pull up stakes and leave.

Moreover, S.197 will also make insurance significantly more expensive and less available in Vermont. Subjecting manufacturers and other businesses in the state to large uninsured losses will, in effect, slowly drive them out of business. A single medical monitoring claim could be significant enough to drain all of a company's resources.

Based on the objections outlined above, I must return this legislation without my signature pursuant to Chapter II, Section 11 of the Vermont Constitution.

There is, however, a reasonable path forward that would improve employee protections, without the devastating impacts S.197 would have on our economy.

Should the Legislature want to take this issue up again in the next biennium, I would recommend the following to ensure the legislation achieves the goals of added protections without the unintended consequences to our economy:

- Increase the burden of proof to a clear and convincing standard;
- Before damages are awarded and attorneys are paid, show that the employer has acted negligently or recklessly;
- Pursue an objective and scientifically-based test for the definition of toxic substances and an objective and scientifically-based standard for the need of testing; and
- Consider narrowing the bill specifically to unpermitted activities.

Again, I believe there is a way to move forward on this issue that will benefit Vermonters without unduly harming our economy. Unfortunately, as written S.197 would have extremely negative consequences for Vermont's economy.

Sincerely,



Philip B. Scott
Governor

PBS/kp