

Bill as Introduced

HB 1375 - AS INTRODUCED

2020 SESSION

20-2698

01/08

HOUSE BILL

1375

AN ACT

relative to cancellations of commercial insurance policies.

SPONSORS:

Rep. Hunt, Ches. 11; Sen. French, Dist 7

COMMITTEE:

Commerce and Consumer Affairs

ANALYSIS

This bill clarifies grounds for cancellation of commercial insurance.

This bill is a request of the insurance department.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to cancellations of commercial insurance policies.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 Cancellation or Refusal to Renew Commercial Insurance; Grounds for Cancellation. RSA 417-
2 C:1, I(c) is repealed and reenacted to read as follows:
3 (c) A change in the risk that substantially increases a hazard insured against after
4 insurance coverage has been issued or renewed.
5 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1375 - AS AMENDED BY THE SENATE

06/29/2020 1568s

2020 SESSION

20-2698

01/08

HOUSE BILL **1375**

AN ACT relative to claims for medical monitoring.

SPONSORS: Rep. Hunt, Ches. 11; Sen. French, Dist 7.

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill establishes the elements of a claim for medical monitoring and the damages that may be awarded.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to claims for medical monitoring.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Claims for Medical Monitoring. Amend RSA by inserting after chapter 125-S
2 the following new chapter:

3 CHAPTER 125-T

4 CLAIMS FOR MEDICAL MONITORING

5 125-T:1 Purpose. The general court finds that a claim for medical monitoring is consistent with
6 currently existing common law in the state of New Hampshire and other jurisdictions. The purpose
7 of this chapter is to make the remedy of medical monitoring damages more uniform and better
8 address the needs of those exposed.

9 125-T:2 Definitions. In this chapter:

10 I. "Exposure" means ingestion, inhalation, contact with skin or eyes, or any other physical
11 contact.

12 II. "Hazardous or toxic substance" means any chemical or biological substance that is
13 categorized as toxic, or an equivalent, by the United States Environmental Protection Agency (EPA)
14 or the Agency for Toxic Substance and Disease Registry (ATSDR) of the United States Department
15 of Health and Human Services. Chemical or biological substances which are not so categorized may
16 be proven to be hazardous or toxic by a preponderance of the evidence by expert testimony.

17 125-T:3 Elements of Claim.

18 I. In order to prove a claim for medical monitoring damages, the plaintiff must show by a
19 preponderance of the evidence for each of the following that:

20 (a) The defendant negligently caused significant exposure to a proven hazardous or toxic
21 substance;

22 (b) The plaintiff now suffers from an increased risk of illness, disease, or latent disease.
23 The plaintiff does not need to prove that the illness, disease, or latent disease is certain or likely to
24 develop as a result of the exposure;

25 (c) The increased risk under subparagraph (b) makes the need for diagnostic testing
26 reasonably necessary; and

27 (d) Medical tests exist to detect the illness, disease, or latent disease.

28 II. A claim for medical monitoring damages may be made without proof of present physical
29 injury or symptoms.

30 III. Present or past health status shall not be at issue in a claim for medical monitoring.

31 125-T:4 Damages.

HB 1375 - AS AMENDED BY THE SENATE

- Page 2 -

1 I. Damages shall be limited to reasonably necessary periodic examinations and related costs.
2 The costs and necessity of such examinations shall be proven by expert testimony.

3 II. If medical monitoring relief is awarded, a court may place the award into a court-
4 supervised program administered by one or more medical professionals.

5 III. Upon an award of medical monitoring damages, the court may award to the plaintiff
6 reasonable attorney's fees and other litigation costs reasonably incurred.

7 125-T:5 Statute of Limitation. Medical monitoring claims shall be made with 3 years of the
8 effective date of this chapter or discovery of exposure. The date when the hazardous or toxic
9 substance was released is immaterial for purposes of this section.

10 125-T:6 Severability. If any provision of this chapter or the application thereof to any person or
11 circumstances is held invalid, such invalidity shall not affect other provisions or applications of the
12 chapter which can be given effect without the invalid provision or application, and to this end the
13 provisions of this chapter are declared to be severable.

14 2 Effective Date. This act shall take effect upon its passage.

HB 1375 - FINAL VERSION

06/29/2020 1568s

2020 SESSION

20-2698

01/08

HOUSE BILL **1375**

AN ACT relative to claims for medical monitoring.

SPONSORS: Rep. Hunt, Ches. 11; Sen. French, Dist 7

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

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26 reasonably necessary; and

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29 injury or symptoms.

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12 chapter which can be given effect without the invalid provision or application, and to this end the
13 provisions of this chapter are declared to be severable.

14 2 Effective Date. This act shall take effect upon its passage.

Amendments

Amendment to HB 1375

1 Amend the title of the bill by replacing it with the following:

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4

5 Amend the bill by replacing all after the enacting clause with the following:

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UNAPPROVED

2020-1548s

AMENDED ANALYSIS

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UNAPPROVED

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Amendment to HB 1375
- Page 3 -

2020-1568s

AMENDED ANALYSIS

This bill establishes the elements of a claim for medical monitoring and the damages that may be awarded.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Martha Hennessey, Chair
Sen Shannon Chandley, Vice Chair
Sen Melanie Levesque, Member
Sen Sharon Carson, Member
Sen Harold French, Member

Date: June 19, 2020

HEARINGS

Wednesday	06/24/2020	
(Day)	(Date)	
Judiciary	REMOTE	8:00 a.m.
(Name of Committee)	(Place)	(Time)
8:00 a.m.	HB 1375	relative to cancellations of commercial insurance policies.
8:05 a.m.		Hearing on proposed Amendment #2020-1548s, to HB 1375, relative to cancellations of commercial insurance policies.
8:35 a.m.	HB 1249	relative to the legal representation of children in the juvenile justice system.
8:40 a.m.		Hearing on proposed Amendment #2020-1550s, to HB 1249, relative to the legal representation of children in the juvenile justice system.
9:10 a.m.	HB 687-FN	relative to extreme risk protection orders.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. To sign-in and/or speak in support or opposition, please register in advance by using this link: https://www.zoom.us/webinar/register/WN_QH1esiFMQNC5q9CjM5O_jA
 2. To submit your testimony to the committee, please send all documents via email to remotesenate@leg.state.nh.us
 3. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
 4. Or iPhone one-tap: 13126266799,,94954573376# or 19292056099,,94954573376#
 5. Webinar ID: [949 5457 3376](https://www.zoom.us/j/94954573376)
 6. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg2MPMiWrA>
- The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-3043).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1375

Rep. Huitt

Sen. French

HB 1249

Rep. Berrien

Rep. Martin

Sen. Hennessey

Sen. Carson

HB 687-FN

Rep. Altschiller

Rep. Fenton

Rep. Espitia

Rep. Mulligan

Sen. Hennessey

Sen. Dietsch

Rep. Rice

Rep. Gordon

Sen. Reagan

Sen. Bradley

Rep. Knirk

Rep. Backus

Sen. Watters

Sen. Sherman

Sen. Kahn

Jennifer Horgan 271-2609

Martha S. Hennessey
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-2609

HB 1375, relative to cancellations of commercial insurance policies.

Hearing Date: June 24, 2020

Time Opened: 8:10 a.m.

Time Closed: 8:16 a.m.

Members of the Committee Present: Senators Hennessey, Chandley, Levesque, Carson and French

Members of the Committee Absent : None

Bill Analysis: This bill clarifies grounds for cancellation of commercial insurance. This bill is a request of the insurance department.

Sponsors:

Rep. Hunt

Sen. French

Who supports the bill: Please See Sign-In Sheets

Who opposes the bill: Please See Sign-In Sheets

Summary of testimony presented in support:

None

Summary of testimony presented in opposition:

None

Neutral Information Presented:

Senator Hennessey

- Introduced the bill.

jch

Date Hearing Report completed: June 25, 2020

Senate Judiciary Committee

Jennifer Horgan 271-2609

Amendment 1548s, relative to claims for medical monitoring to **HB 1375**, relative to cancellations of commercial insurance policies.

Hearing Date: June 24, 2020

Time Opened: 8:16 a.m.

Time Closed: 9:06 a.m.

Members of the Committee Present: Senators Hennessey, Chandley, Levesque, Carson and French

Members of the Committee Absent : None

Bill Analysis: This bill establishes the elements of a claim for medical monitoring and the damages that may be awarded.

Sponsors:

Rep. Hunt

Sen. French

Who supports the bill: Please See Sign-In Sheets

Who opposes the bill: Please See Sign-In Sheets

Summary of testimony presented in support:

Senator Chandley

- This language was worked on extensively by a subcommittee in the House.
- Noted that Rep. McLean sent over a memo about the House's work on this.
- It puts into law what is currently common law practice.
- The current common law allows for people that have been harmed by toxins to have monitoring done at the expense of the person/entity that has harmed them over time.
- Often when people are harmed by a toxin the resulting injury is not immediately detected, but the toxin may be detected.
- Senator Carson asked how this bill will account for someone exposed to something in NH who subsequently moves out of state.
 - Thinks if a person is harmed by an entity in NH, the person could bring suit in NH despite where they currently live.
- Senator Carson asked how the company would pay for the monitoring; in a lump sum payment from a judgment or spread out over lifelong monitoring.
 - This is exactly why the case would be determined by the court. The court will assess what the reasonable approach to that monitoring is. The monitoring would entail necessary and periodic examinations and those

costs would be borne by the responsible entity. The legislation allows for relief to be awarded at the outset but that would be kept in a court supervised program. People would not necessarily receive some kind of lump sum. It would rather be done in a way that allows that money to be spent for the specific purpose of monitoring.

- Senator Carson pointed out that on page 2 line 8-9 it says 'may'. Wondered if it would be more appropriate to have stronger language that would have the legislature determining what shall be done in these cases instead of the court.
 - 'May' allows the court to make a determination based on the specific circumstances of each case.
- Senator Carson pointed out that on line 12 the language says 'with' when it should be 'within'.

Representative Cushing

- Served on the Seacoast Cancer Cluster Taskforce.
- The seacoast had an inordinate number of rare pediatric cancers. Families in a daycare center on Pease came to find out that the water contained PFAs far in excess of what would be healthy to anyone. Wanted to have access to medical monitoring for these children; Pease granted that.
- A lot of individuals have a loved one who has been exposed to a proven toxic substance; there is a need for medical monitoring so there is time for appropriate intervention.
- This bill provides a framework that is streamlined and more focused than the common law by which the court can make a determination based on the facts of a specific exposure as to what an appropriate remedy to provide medical monitoring is.
- This is like any other tortious act.

Representative Chase

- Served on the subcommittee
- Grew up in Hampton and recently lost her daughter to childhood cancer.
- The subcommittee did a lot of work on this, as the original bill lacked some clarification.
- Is not sure if her daughter's cancer was due to water contamination, but it creates a lot of chaos in her family.
- The financial burden should be covered if it is due to an entity's contamination.
- Just being able to monitor the progression of a patient is important in order to see the repercussions and track a cluster.

Representative Smith (submitted written testimony)

- We have an expanded understanding of the long-term effects of toxic exposure.
- Spent a lot of time narrowing the focus of this bill to provide guidance regarding the rights and responsibilities of all parties involved.
- This strikes a balance of the disparate interests.
- Preserved the need to show negligence and causation on the part of the defendant and required the plaintiff to demonstrate an increased health risk from significant exposure.

- This bill holds the negligent accountable, protects the users who operate in good faith within the law, and provides a much-needed legal remedy for monitoring to those who are exposed.

Ken Rumelt

- Professor of law at Vermont Law School and has been working on this topic for many years.
- The ability to do medical monitoring after being exposed to toxins is an important remedy.
- This is something a number of jurisdictions have adopted.
- There is a body of case law to support this.
- This bill hits at the touchstone of medical monitoring, in that it does not require proof of present physical injury or symptoms.
- The point of medical monitoring is to discover latent disease as early as possible.
- In the jurisdictions that have not allowed these types of claims to go forward, it is because they require a present physical injury.
- In those cases, individuals have to prove they have a disease to get monitoring, which defeats the purpose of the monitoring.

Representative Thomas

- Merrimack has been impacted for years by PFAs contamination.
- People have the right to know what toxins are going into their bodies.
- It is documented that Merrimack has increased illness and cancers.
- Many families are living on bottled water because their well water is too toxic to drink.
- Medical monitoring allows people to be proactive.
- PFAs is tied to breast cancer; her daughters will have to be more vigilant in pursuing preventative care.
- The benefits of medical monitoring are immense.

Honorable Mindi Messmer (submitted written testimony)

- Served on the Seacoast Cancer Cluster Taskforce.
- To this day many of the children who were at that daycare have not been able to get monitored for the effects of exposure.
- This bill is important to the seacoast and the Merrimack area.
- Everyday Saint-Gobain emits 190 PFAs chemicals contaminating the air and the water above levels that are safe for people to drink.
- NH has highest rates of childhood cancer, as well as bladder, breast and esophageal cancer in the nation.

Anthony Sculimbrene

- Over the past 30 years the federal courts have taken the lead on many of these cases; cases from all over the country get consolidated.
- The federal court in Concord has vaginal mesh cases as part of a multi-district litigation. They have 40,000 people from all over the country, who they track and provide them with the care necessary should the cases be resolved.
- This is not much different than using your insurance in NH to get medical care in another state.
- As long as, you are paying attention and the federal courts are sending out notices you should be okay.

- Removing the proof of physical injury requirement would allow defense attorneys to import bad language from other states.
- These cases come about because people were exposed to a known harm, but the consequences are not immediate.
- We do not know what the consequences are and to not have monitoring seems to be an especially cruel thing.
- Generally, the motions are filed at the beginning of the case when the proof of psychological injury language is removed. (Civil Procedure is done 12-B:6) Those have to be filed within the first 21 days in a case, before discovery is done and evidence is presented. It is not the case that removing this language will allow the courts to hear that evidence.
- Science is always behind the curve because new chemicals are always being made and the sensitivity of the body to these chemicals is being refined.
- If we do not allow monitoring, we will be chasing sick people rather than preventing people from getting sick.

Representative Altschiller

- Served on the House subcommittee.
- NH has upwards of thousands of residents who have been exposed to toxins that may or may not show up on a cellular level.
- Stratham is part of the community of 10,000 people that work at Pease.
- We do not know if those children at the daycare on Pease will be affected by things like a learning disability or a type of cancer that are linked to PFAs exposure.
- These people through no fault of their own have to keep a special eye on their health.

Representative Horrigan

- If someone moves out of the state that does not affect the lawsuit.
- Can see why polluters don't want to pay for the damage they cause.
- Drinking water is on people's minds and they are concerned
- Medical monitoring is a simple thing that does not cost very much unless a person is sick.
- If someone is sick the polluter does have to pay for the medical care.

Summary of testimony presented in opposition:

Gregory Smith (Waste Management of NH)

- This bill has been generated to deal with PFAs exposure and is not here to speak on that.
- This bill sweeps up thousands of NH businesses that do not handle PFAs into a statutory scheme different than anything we have had before and treats those businesses unfairly.
- Proposes an amendment to strike on page 2 lines 2-3 'physical injury', leaving the word 'symptoms'.
- This would require that if someone is to make a claim they would have to show some evidence, even at a cellular level, that their body has been injured.
- Without this change, the bill allows the diversion of resources away from those who have been injured to those who are not and may never be injured.

- Parties in cases like this are foreclosed from presenting highly relevant medical information for the court to consider in a medical monitoring case (page 2 lines 4-5).
- Sees no reason why the court should not be able to consider that evidence.
- Justice requires a fair full hearing.
- This bill restricts the usual approach for hearing a case like this.
- Senator French asked if removing 'physical injury' would remove the concerns about this being too widespread.
 - Thinks it would address that. Thinks taking the other provision out would also be helpful. There is recent case law that PFAs claims will not have difficulty on this point because PFAs is present in the bloodstream of virtually every American citizen. Therefore, individuals have evidence of exposure. Taking out that provision would help in all the other cases for businesses involved in completely different activities using different substances. There should be some proof of injury and exposure to those chemicals.
- Senator Chandley asked if his amendment was considered by the House subcommittee and questioned if physical injury is present why would you need monitoring to find that injury.
 - There were a series of things discussed by the House. In the law that is developing across the country on this, in order to make an entity pay for monitoring an individual has to show injury. His proposal leaves 'symptoms' as it would not be necessary to show symptoms, but a person has to prove, even on a cellular level, that they have been affected by these substances. Believes people would come to NH to litigate because this is different than anywhere else. Thinks there is a lack of awareness of how this bill would affect other businesses. In April, a court case showed that people have no difficulty showing PFAs in their bloodstream because we all have it in our bloodstream. That is not the case for other thousands of businesses and substances.

jch
Date Hearing Report completed: June 25, 2020

Testimony

Jennifer Horgan

From: Mark McLean
Sent: Sunday, June 21, 2020 5:20 PM
To: Martha Hennessey; Shannon Chandley; Sharon Carson; Melanie Levesque; Harold French; Jennifer Horgan
Cc: Marjorie Smith; Renny Cushing
Subject: Testimony in support of HB 1375
Attachments: HB 1375 Testimony-Rep. McLean.docx

Dear Chairwoman Hennessey and Members of the Senate Judiciary Committee,

I am writing to you to express my full support for HB 1375 as amended by 2020-1548s. As chair of the House Judiciary sub-committee that reviewed HB 661 (the antecedent to HB 1375), I want you to know that we worked very hard on the language that has ultimately presented itself in the amendment.

While a prior work commitment prevents me from testifying in person on Wednesday, I am attaching my written testimony for the record and your review. In it I have tried to summarize the priorities of our sub-committee work, and the legal foundation upon which we built the final text of the amendment. I hope you find it useful, and support the bill as amended by 1548s.

Best Regards,

Mark McLean
Hills 44

Action on HB 1375

First Name	Last Name	Role	Action on HB 1375
Marjorie	Smith	Elected Official	Viewing/Listening only
Renny	Cushing	Elected Official	Support and speaking
Dan	Feltes	Elected Official	Support not speaking
Representative Deb	Altschiller	Elected Official	Neutral not speaking
Representative Jerry	Knirk	Elected Official	Viewing/Listening only
David	Coursin	Elected Official	Viewing/Listening only
Tim	Horrigan	Elected Official	Neutral not speaking
Mary Jane	Mulligan	Elected Official	Viewing/Listening only
Deb	Stevens	Elected Official	Support not speaking
Clyde	Bacon	Member of the public	Neutral not speaking
JOSEPH	DEPALO	Member of the public	Oppose and speaking
Robin	Skudlarek	Member of the public	Viewing/Listening only
Dave	Breault	Lobbyist/Advocate	Viewing/Listening only
Michael	Iacopino	Member of the public	Viewing/Listening only
Mindi	Messmer	Member of the public	Viewing/Listening only
Michelle	Levell	Member of the public	Neutral not speaking
Kimberly	Morin	Member of the public	Viewing/Listening only
Tracy	Hahn-Burkett	Member of the public	Viewing/Listening only
Paul	Maravelias	Member of the public	Viewing/Listening only
sonia	Prince	Member of the public	Viewing/Listening only
Patrick	McCarthy	Member of the public	Neutral not speaking
Wesley	Sullivan	Lobbyist/Advocate	Neutral not speaking
Howard	Harris	Member of the public	Oppose and speaking
Daniel	Stuart	Member of the public	Oppose and speaking
Curtis	Wright IV MD MPH	Member of the public	Viewing/Listening only
JR	Hoell	Member of the public	Viewing/Listening only
Lauren	LePage	Lobbyist/Advocate	Viewing/Listening only
Edward	Morse	Member of the public	Viewing/Listening only
Evan	Coar	Member of the public	Viewing/Listening only
Shirley	Dawson	Member of the public	Viewing/Listening only
Travis	Williams	Member of the public	Viewing/Listening only
Jeff	Hiatt	Member of the public	Viewing/Listening only
Rob	Leatherbee	Member of the public	Neutral not speaking
Donald	Sienkiewicz	Member of the public	Viewing/Listening only
Virginia	Sheehan	Member of the public	Viewing/Listening only
Hollis	Willoughby	Member of the public	Neutral not speaking
Heidi	Hanson	Member of the public	Viewing/Listening only
Andrew	Caldwell	Member of the public	Neutral not speaking
Brad	Rohdenburg	Member of the public	Viewing/Listening only
Gregory	Smith	Lobbyist/Advocate	Viewing/Listening only
James	Cross	Member of the public	Oppose and speaking
Ken	Rumelt	Member of the public	Support and speaking
Anthony	Sculimbrene	Member of the public	Support not speaking

Thom	Bloomquist	Member of the public	Viewing/Listening only
Wendy	Thomas	Elected Official	Support not speaking
Cindy	White	Member of the public	Viewing/Listening only
Pamela	Hanson	Member of the public	Viewing/Listening only
Carol	Gulla	Member of the public	Neutral not speaking
Jonathan	Caldwell	Member of the public	Neutral not speaking
Thomas	Dawson	Member of the public	Viewing/Listening only
Ted	Maravelias	Member of the public	Neutral not speaking
Robert	Clegg	Lobbyist/Advocate	Viewing/Listening only
Joe	Hannon	Lobbyist/Advocate	Neutral not speaking
Liam	Bellows	Member of the public	Viewing/Listening only
Ethan	Jennings	Member of the public	Viewing/Listening only
James	Gaffney	Member of the public	Viewing/Listening only
Barbara	Prien	Member of the public	Viewing/Listening only
Rebecca	Hayes	Member of the public	Viewing/Listening only
Margaret	Tilton	Member of the public	Viewing/Listening only
Ken	Norton	Lobbyist/Advocate	Viewing/Listening only
Joseph	Cameron	Member of the public	Viewing/Listening only
Mary	Crook	Member of the public	Neutral not speaking
Michael	Layon	Member of the public	Viewing/Listening only
tonda	groetzinger	Member of the public	Neutral not speaking
Erica	Layon	Member of the public	Viewing/Listening only
Aaron	Greenlee	Member of the public	Viewing/Listening only
Laura	Hopkinson	Member of the public	Neutral not speaking
Michael jr	Wolley	Member of the public	Oppose not speaking
Jay	Kahn	Elected Official	Support not speaking
Kimberley	Jackson	Member of the public	Oppose not speaking
Kathleen	Tereshko	Member of the public	Viewing/Listening only
Mallory	Nugent	Lobbyist/Advocate	Viewing/Listening only
Patrick	Leblanc	Member of the public	Oppose not speaking
Chris	Blanchette	Member of the public	Viewing/Listening only
MATTHEW	Miller	Member of the public	Neutral not speaking
Patricia	Kasparian	Member of the public	Support not speaking
Steven	Wesner	Member of the public	Neutral not speaking
Bryan	Gillis	Member of the public	Oppose not speaking
William	Hurtado	Member of the public	Neutral not speaking
Robert	Watson	Member of the public	Viewing/Listening only
Michael	Bedford	Member of the public	Neutral not speaking
Patrick	Martunas	Member of the public	Oppose not speaking
Brittney	Joyce	Member of the public	Viewing/Listening only
Alisa	Druzba	Staff member of NH DOS, NHES, or DHHS	Viewing/Listening only
Mary Jane	Mulligan	Elected Official	Viewing/Listening only
Lisa	Dennis	Member of the public	Viewing/Listening only
Colby	Martin	Member of the public	Viewing/Listening only
Richard	Spalla	Member of the public	Viewing/Listening only
Shawn	Stokes	Member of the public	Oppose not speaking

Carol	Bostic	Member of the public	Viewing/Listening only
Judy	Kinney	Member of the public	Support not speaking
Nicole	LeVasseur	Member of the public	Viewing/Listening only
Timothy	Sylvernale	Member of the public	Oppose not speaking
Jessica	Stone	Member of the public	Neutral not speaking
Julie	Sims	Member of the public	Support not speaking
Sarah	Chamberlain	Member of the public	Viewing/Listening only
Mary Ann	Pumilia	Member of the public	Neutral not speaking
Gordon	Kemp	Member of the public	Viewing/Listening only
Deidre	Reynolds	Member of the public	Viewing/Listening only
Chris	Hemmah	Member of the public	Oppose not speaking
Duncan	Blow	Member of the public	Oppose not speaking
Kristen	Moore	Member of the public	Oppose not speaking
Wendy	Chase	Elected Official	Support not speaking
Albin	Zuech	Member of the public	Viewing/Listening only
Curtis	Howland	Member of the public	Viewing/Listening only
Brian	Chicoine	Member of the public	Oppose not speaking
Matt	Rozch	Member of the public	Oppose not speaking
Paul	Tedder	Member of the public	Viewing/Listening only
Frank	Iaffaldano	Member of the public	Support not speaking
David	Stone	Member of the public	Viewing/Listening only
Frederick	Woodhouse	Member of the public	Neutral not speaking
Robert	Andrade	Member of the public	Viewing/Listening only
Alexandra	Taylor	Member of the public	Oppose not speaking
Robert	Backus	Elected Official	Neutral not speaking
Michelle	Strong	Member of the public	Viewing/Listening only
John	Montuori	Member of the public	Neutral not speaking
Kay	May	Member of the public	Viewing/Listening only
Kirsten	Williams	Member of the public	Neutral not speaking
Michael	Wolf-Gadsby	Member of the public	Oppose not speaking
Donovan	Fenton	Elected Official	Viewing/Listening only
Kathleen	Slover	Member of the public	Viewing/Listening only
Jeanne	Dietsch	Elected Official	Viewing/Listening only
Francesca	Diggs	Elected Official	Viewing/Listening only
Paul	Berch	Elected Official	Support not speaking
Michael	Cahill	Elected Official	Viewing/Listening only
Kevin	Tyson	Member of the public	Viewing/Listening only
JoEllen	Cuff	Member of the public	Viewing/Listening only
Patricia	Klee	Elected Official	Viewing/Listening only
Willem	Froumy	Member of the public	Viewing/Listening only
Edward	smith	Member of the public	Viewing/Listening only
Glenn	Rogers	Member of the public	Viewing/Listening only
Donald	Bouchard	Elected Official	Support not speaking
Don	House	Member of the public	Viewing/Listening only
Elias	Karter	Lobbyist/Advocate	Viewing/Listening only
Patricia	Cornell	Elected Official	Viewing/Listening only
Rhonda	Martin	Member of the public	Oppose not speaking

Kim	Rivest	Member of the public	Support not speaking
Rosemarie	Rung	Elected Official	Viewing/Listening only
SUZANNE	VAIL	Elected Official	Support not speaking
David	Meuse	Elected Official	Viewing/Listening only
Katherine	Herger	Member of the public	Viewing/Listening only
Sherry	Frost	Elected Official	Viewing/Listening only
Robin	Schnell	Member of the public	Support not speaking
natalia	dworjanyyn	Member of the public	Viewing/Listening only
Deborah	Seavey	Member of the public	Viewing/Listening only
Lee	Oxenham	Elected Official	Support not speaking
Kevin	Craig	Elected Official	Neutral not speaking
Paul	Babb	Member of the public	Neutral not speaking
Richard	Sheehy	Member of the public	Viewing/Listening only
Randall	Cohen	Member of the public	Viewing/Listening only
Kevin	Kadow	Member of the public	Viewing/Listening only
Kendall	Snow	Elected Official	Viewing/Listening only
Manuel	Espitia	Elected Official	Viewing/Listening only
Rep. Liz	McConnell	Elected Official	Viewing/Listening only
Rep Chuck	Grassie	Elected Official	Neutral not speaking
Jennifer	Piskovitz	Member of the public	Viewing/Listening only
Christine	Caldwell	Member of the public	Neutral not speaking
Jon	Leslie	Member of the public	Viewing/Listening only
Kristen	Murphy	Member of the public	Neutral not speaking
Anthony	Palisi	Member of the public	Oppose not speaking
Sheri	Gushta	Member of the public	Viewing/Listening only
Greg	Pearce	Member of the public	Oppose not speaking
Keri	Ciminera	Member of the public	Neutral not speaking
Nancy	Murphy	Elected Official	Viewing/Listening only
Amy	Bradley	Member of the public	Viewing/Listening only
Denise	Short	Member of the public	Viewing/Listening only
James	Myers	Member of the public	Oppose not speaking
Meaghan	Moore	Member of the public	Support not speaking
Lori	Baldwin	Member of the public	Neutral not speaking
Nancy	Murphy	Elected Official	Support not speaking
Arlen	Acevedo	Member of the public	Viewing/Listening only
carl	sigvardson	Member of the public	Oppose not speaking
Sherri	Nixon	Member of the public	Viewing/Listening only
Cheryl	Van Allen	Member of the public	Viewing/Listening only
Jim	Maggiore	Elected Official	Support not speaking
Gerald	Webb	Member of the public	Oppose not speaking
J. J.	Smith, MD, MPH	Lobbyist/Advocate	Viewing/Listening only
Jennie	Gomarlo	Elected Official	Support not speaking
Jeremy	Sparks	Member of the public	Oppose not speaking
Jan	Dunn	Member of the public	Viewing/Listening only
Ami	Faria	Member of the public	Viewing/Listening only
Lawrence	Melanson	Member of the public	Viewing/Listening only
Laurie	Harding	Member of the public	Viewing/Listening only

Gina	Powers	Lobbyist/Advocate	Viewing/Listening only
Charlotte	Graf	Member of the public	Viewing/Listening only
Marissa	Chase	Member of the public	Viewing/Listening only
John	DeJoie	Lobbyist/Advocate	Viewing/Listening only
Abigail	Rogers	Staff member of NH DOS, NHES, or DHHS	Viewing/Listening only
Tom	Sherman	Elected Official	Viewing/Listening only
Kristine	Stoddard	Lobbyist/Advocate	Viewing/Listening only
Rita	Mattson	Member of the public	Viewing/Listening only
Lindsey	Sonnett	Member of the public	Neutral not speaking
Ken	Park	Member of the public	Oppose not speaking
Dwayne	Othoudt	Member of the public	Neutral not speaking
Kevin	Trefethen	Member of the public	Oppose not speaking
Rick	Bond	Member of the public	Viewing/Listening only
Michael	Lambros	Member of the public	Viewing/Listening only
Paul	Marquis	Member of the public	Viewing/Listening only
M Gretchen	McBride	Member of the public	Viewing/Listening only
Jeffrey	Mercier	Member of the public	Oppose not speaking
Matt	Wrightington	Member of the public	Oppose not speaking
Joanne	St. John	Member of the public	Support not speaking
Jared	king		

Action on Amendment to HB 1375

First Name	Last Name	Role	Action on Amendment to HB 1375
Marjorie	Smith	Elected Official	Support and speaking
Renny	Cushing	Elected Official	Support and speaking
Dan	Feltes	Elected Official	Support not speaking
Representative Deb	Altschiller	Elected Official	Neutral not speaking
Representative Jerry	Knirk	Elected Official	Viewing/Listening only
David	Coursin	Elected Official	Viewing/Listening only
Tim	Horrigan	Elected Official	Support not speaking
Mary Jane	Mulligan	Elected Official	Viewing/Listening only
Deb	Stevens	Elected Official	Support not speaking
Clyde	Bacon	Member of the public	Neutral not speaking
JOSEPH	DEPALO	Member of the public	Oppose and speaking
Robin	Skudlarek	Member of the public	Viewing/Listening only
Dave	Breault	Lobbyist/Advocate	Viewing/Listening only
Michael	Iacopino	Member of the public	Viewing/Listening only
Mindi	Messmer	Member of the public	Support and speaking
Michelle	Levell	Member of the public	Neutral not speaking
Kimberly	Morin	Member of the public	Viewing/Listening only
Tracy	Hahn-Burkett	Member of the public	Viewing/Listening only
Paul	Maravelias	Member of the public	Viewing/Listening only
sonia	Prince	Member of the public	Viewing/Listening only
Patrick	McCarthy	Member of the public	Neutral not speaking
Wesley	Sullivan	Lobbyist/Advocate	Neutral not speaking
Howard	Harris	Member of the public	Oppose not speaking
Daniel	Stuart	Member of the public	Oppose not speaking
Curtis	Wright IV MD MPH	Member of the public	Viewing/Listening only
JR	Hoell	Member of the public	Viewing/Listening only
Lauren	LePage	Lobbyist/Advocate	Viewing/Listening only
Edward	Morse	Member of the public	Viewing/Listening only
Evan	Coar	Member of the public	Viewing/Listening only
Shirley	Dawson	Member of the public	Viewing/Listening only
Travis	Williams	Member of the public	Neutral not speaking
Jeff	Hiatt	Member of the public	Viewing/Listening only
Rob	Leatherbee	Member of the public	Neutral not speaking
Donald	Sienkiewicz	Member of the public	Viewing/Listening only
Virginia	Sheehan	Member of the public	Viewing/Listening only
Hollis	Willoughby	Member of the public	Neutral not speaking
Heidi	Hanson	Member of the public	Viewing/Listening only
Andrew	Caldwell	Member of the public	Neutral not speaking
Brad	Rohdenburg	Member of the public	Viewing/Listening only
Gregory	Smith	Lobbyist/Advocate	Oppose and speaking
James	Cross	Member of the public	Oppose not speaking
Ken	Rumelt	Member of the public	Support and speaking
Anthony	Sculimbrene	Member of the public	Support and speaking

Thom	Bloomquist	Member of the public	Oppose and speaking
Wendy	Thomas	Elected Official	Support and speaking
Cindy	White	Member of the public	Viewing/Listening only
Pamela	Hanson	Member of the public	Viewing/Listening only
Carol	Gulla	Member of the public	Neutral not speaking
Jonathan	Caldwell	Member of the public	Neutral not speaking
Thomas	Dawson	Member of the public	Viewing/Listening only
Ted	Maravelias	Member of the public	Neutral not speaking
Robert	Clegg	Lobbyist/Advocate	Viewing/Listening only
Joe	Hannon	Lobbyist/Advocate	Neutral not speaking
Liam	Bellows	Member of the public	Viewing/Listening only
Ethan	Jennings	Member of the public	Viewing/Listening only
James	Gaffney	Member of the public	Viewing/Listening only
Barbara	Prien	Member of the public	Viewing/Listening only
Rebecca	Hayes	Member of the public	Viewing/Listening only
Margaret	Tilton	Member of the public	Viewing/Listening only
Ken	Norton	Lobbyist/Advocate	Viewing/Listening only
Joseph	Cameron	Member of the public	Viewing/Listening only
Mary	Crook	Member of the public	Neutral not speaking
Michael	Layon	Member of the public	Viewing/Listening only
tonda	groetzinger	Member of the public	Neutral not speaking
Erica	Layon	Member of the public	Viewing/Listening only
Aaron	Greenlee	Member of the public	Viewing/Listening only
Laura	Hopkinson	Member of the public	Neutral and speaking
Michael jr	Wolley	Member of the public	Oppose not speaking
Jay	Kahn	Elected Official	Support not speaking
Kimberley	Jackson	Member of the public	Oppose not speaking
Kathleen	Tereshko	Member of the public	Viewing/Listening only
Mallory	Nugent	Lobbyist/Advocate	Viewing/Listening only
Patrick	Leblanc	Member of the public	Oppose not speaking
Chris	Blanchette	Member of the public	Viewing/Listening only
MATTHEW	Miller	Member of the public	Neutral not speaking
Patricia	Kasparian	Member of the public	Support not speaking
Steven	Wesner	Member of the public	Neutral not speaking
Bryan	Gillis	Member of the public	Oppose not speaking
William	Hurtado	Member of the public	Neutral not speaking
Robert	Watson	Member of the public	Viewing/Listening only
Michael	Bedford	Member of the public	Neutral not speaking
Patrick	Martunas	Member of the public	Oppose not speaking
Brittney	Joyce	Member of the public	Viewing/Listening only
Alisa	Druzba	Staff member of NH DOS, NHES, or DHHS	Viewing/Listening only
Mary Jane	Mulligan	Elected Official	Viewing/Listening only
Lisa	Dennis	Member of the public	Viewing/Listening only
Colby	Martin	Member of the public	Viewing/Listening only
Richard	Spalla	Member of the public	Viewing/Listening only
Shawn	Stokes	Member of the public	Oppose not speaking

Carol	Bostic	Member of the public	Viewing/Listening only
Judy	Kinney	Member of the public	Support not speaking
Nicole	LeVasseur	Member of the public	Viewing/Listening only
Timothy	Sylvernale	Member of the public	Viewing/Listening only
Jessica	Stone	Member of the public	Neutral not speaking
Julie	Sims	Member of the public	Support not speaking
Sarah	Chamberlain	Member of the public	Viewing/Listening only
Mary Ann	Pumilia	Member of the public	Neutral not speaking
Gordon	Kemp	Member of the public	Viewing/Listening only
Deidre	Reynolds	Member of the public	Viewing/Listening only
Chris	Hemmah	Member of the public	Oppose not speaking
Duncan	Blow	Member of the public	Oppose not speaking
Kristen	Moore	Member of the public	Oppose not speaking
Wendy	Chase	Elected Official	Support not speaking
Albin	Zuech	Member of the public	Viewing/Listening only
Curtis	Howland	Member of the public	Viewing/Listening only
Brian	Chicoine	Member of the public	Oppose not speaking
Matt	Rozch	Member of the public	Oppose not speaking
Paul	Tedder	Member of the public	Viewing/Listening only
Frank	Iaffaldano	Member of the public	Support not speaking
David	Stone	Member of the public	Viewing/Listening only
Frederick	Woodhouse	Member of the public	Neutral not speaking
Robert	Andrade	Member of the public	Viewing/Listening only
Alexandra	Taylor	Member of the public	Oppose not speaking
Robert	Backus	Elected Official	Neutral not speaking
Michelle	Strong	Member of the public	Viewing/Listening only
John	Montuori	Member of the public	Neutral not speaking
Kay	May	Member of the public	Viewing/Listening only
Kirsten	Williams	Member of the public	Neutral not speaking
Michael	Wolf-Gadsby	Member of the public	Oppose not speaking
Donovan	Fenton	Elected Official	Viewing/Listening only
Kathleen	Slover	Member of the public	Viewing/Listening only
Jeanne	Dietsch	Elected Official	Viewing/Listening only
Francesca	Diggs	Elected Official	Viewing/Listening only
Paul	Berch	Elected Official	Neutral not speaking
Michael	Cahill	Elected Official	Viewing/Listening only
Kevin	Tyson	Member of the public	Viewing/Listening only
JoEllen	Cuff	Member of the public	Viewing/Listening only
Patricia	Klee	Elected Official	Viewing/Listening only
Willem	Froumy	Member of the public	Viewing/Listening only
Edward	smith	Member of the public	Viewing/Listening only
Glenn	Rogers	Member of the public	Viewing/Listening only
Donald	Bouchard	Elected Official	Support not speaking
Don	House	Member of the public	Viewing/Listening only
Elias	Karter	Lobbyist/Advocate	Viewing/Listening only
Patricia	Cornell	Elected Official	Viewing/Listening only
Rhonda	Martin	Member of the public	Oppose not speaking

Kim	Rivest	Member of the public	Support not speaking
Rosemarie	Rung	Elected Official	Viewing/Listening only
SUZANNE	VAIL	Elected Official	Support not speaking
David	Meuse	Elected Official	Viewing/Listening only
Katherine	Herger	Member of the public	Viewing/Listening only
Sherry	Frost	Elected Official	Viewing/Listening only
Robin	Schnell	Member of the public	Support not speaking
natalia	dworjany	Member of the public	Viewing/Listening only
Deborah	Seavey	Member of the public	Viewing/Listening only
Lee	Oxenham	Elected Official	Support not speaking
Kevin	Craig	Elected Official	Oppose not speaking
Paul	Babb	Member of the public	Neutral not speaking
Richard	Sheehy	Member of the public	Viewing/Listening only
Randall	Cohen	Member of the public	Viewing/Listening only
Kevin	Kadow	Member of the public	Viewing/Listening only
Kendall	Snow	Elected Official	Viewing/Listening only
Manuel	Espitia	Elected Official	Viewing/Listening only
Rep. Liz	McConnell	Elected Official	Viewing/Listening only
Rep Chuck	Grassie	Elected Official	Neutral not speaking
Jennifer	Piskovitz	Member of the public	Viewing/Listening only
Christine	Caldwell	Member of the public	Neutral not speaking
Jon	Leslie	Member of the public	Viewing/Listening only
Kristen	Murphy	Member of the public	Neutral not speaking
Anthony	Palisi	Member of the public	Oppose not speaking
Sheri	Gushta	Member of the public	Viewing/Listening only
Greg	Pearce	Member of the public	Oppose not speaking
Keri	Ciminera	Member of the public	Neutral not speaking
Nancy	Murphy	Elected Official	Viewing/Listening only
Amy	Bradley	Member of the public	Viewing/Listening only
Denise	Short	Member of the public	Viewing/Listening only
James	Myers	Member of the public	Oppose not speaking
Meaghan	Moore	Member of the public	Support not speaking
Lori	Baldwin	Member of the public	Neutral not speaking
Nancy	Murphy	Elected Official	Support not speaking
Arlen	Acevedo	Member of the public	Viewing/Listening only
carl	sigvardson	Member of the public	Oppose not speaking
Sherri	Nixon	Member of the public	Viewing/Listening only
Cheryl	Van Allen	Member of the public	Viewing/Listening only
Jim	Maggiore	Elected Official	Support not speaking
Gerald	Webb	Member of the public	Oppose not speaking
J. J.	Smith, MD, MPH	Lobbyist/Advocate	Viewing/Listening only
Jennie	Gomarolo	Elected Official	Neutral not speaking
Jeremy	Sparks	Member of the public	Oppose not speaking
Jan	Dunn	Member of the public	Viewing/Listening only
Ami	Faria	Member of the public	Viewing/Listening only
Lawrence	Melanson	Member of the public	Viewing/Listening only
Laurie	Harding	Member of the public	Viewing/Listening only

Gina	Powers	Lobbyist/Advocate	Viewing/Listening only
Charlotte	Graf	Member of the public	Viewing/Listening only
Marissa	Chase	Member of the public	Support not speaking
John	DeJoie	Lobbyist/Advocate	Viewing/Listening only
Abigail	Rogers	Staff member of NH DOS, NHES, or DHHS	Viewing/Listening only
Tom	Sherman	Elected Official	Viewing/Listening only
Kristine	Stoddard	Lobbyist/Advocate	Viewing/Listening only
Rita	Mattson	Member of the public	Viewing/Listening only
Lindsey	Sonnett	Member of the public	Neutral not speaking
Ken	Park	Member of the public	Oppose not speaking
Dwayne	Oothoudt	Member of the public	Oppose not speaking
Kevin	Trefethen	Member of the public	Oppose not speaking
Rick	Bond	Member of the public	Viewing/Listening only
Michael	Lambros	Member of the public	Viewing/Listening only
Paul	Marquis	Member of the public	Viewing/Listening only
M Gretchen	McBride	Member of the public	Viewing/Listening only
Jeffrey	Mercier	Member of the public	Oppose not speaking
Matt	Wrightington	Member of the public	Oppose not speaking
Joanne	St. John	Member of the public	Support not speaking
Jared	king		

Jennifer Horgan

From: Kurt Wuelper
Sent: Monday, June 22, 2020 2:24 PM
To: Martha Hennessey; Shannon Chandley; Melanie Levesque; Sharon Carson; Harold French; Jennifer Horgan
Subject: Medical Monitoring

Senators,

I was part of the House Judiciary committee Medical monitoring study group and supported its final recommendation which passed the whole House and you consider.

Despite all that, I now oppose accepting Medical monitoring as a remedy for a **potential** tort. Medical Monitoring essentially punishes one responsible for another's exposure to substances **believed** [not proven] to **possibly cause or contribute** to an ailment at some **future** time. Taken together these various unknowns make any quantifiable injury highly speculative.

I can't support creating a cause of action when no provable harm has occurred and none may ever occur.¹ Unfortunately, I can't be part of tomorrow's hearing on Medical monitoring, but I request this communication be made part of the official record of your public hearing.

The purpose of government is to protect life
Rep Kurt Wuelper
Strafford 3
House Judiciary committee

Jennifer Horgan

From: Mindi Messmer <mmessmer@me.com>
Sent: Wednesday, June 24, 2020 7:58 AM
To: Martha Hennessey; Shannon Chandley; Melanie Levesque; Sharon Carson; Harold French; Jennifer Horgan
Subject: Amendment 2020-1548s to HB1375

June 24, 2020

Honorable Senate Judiciary Members,

I write to you in support of amendment 2020-1548s to HB1375. This is a very important bill to the people of Merrimack, Litchfield, Londonderry, Manchester, Bedford and the seacoast and many other communities that are unaware. The House Judiciary committee carefully considered this important legislation for a second time and passed this final version to this body.

As you may know, N.H. has the highest rates of children with cancer in the nation, along with the highest rates of bladder, breast, and esophageal cancer in the nation. N.H. also makes the top 10 list for many other cancers. We know PFAS exposure causes some cancers - N.H. has to act now to prevent cancer. This bill is an essential step in preventing cancer in N.H.

N.H. also has a history of inadequate regulation of polluters.

Companies like waste management truck 100,000 gallons of PFAS-contaminated waste into the Merrimack River until they are exposed in the Boston Globe.

Today, the State of N.H. will come before the Executive Council at 10 AM to ask for money to continue to send PFAS-contaminated biosolids to Merrimack for composting because they can no longer send it to be spread on the ground like they have for decades. They are asking to bring it to Merrimack so it will end up in compost. People will unknowingly buy the "fertilizer" and spread it all over our lawns and gardens contaminating our property and vegetables.

EPA sampled the air emissions from Saint Gobain Performance Plastics in Merrimack and determined that they push out 190 PFAS chemicals into the air every day. One hundred forty-seven of these PFAS chemicals EPA has never seen. Add these 147 PFAS chemicals to the list of over 5,000 PFAS chemicals known to exist.

Public health science is trying to, but will never catch up with manufacturers that can hide what they are doing as trade secrets. N.H. has determined the safe level of only 4 of the over 5,000 PFAS chemicals, based on the available science, but 3M has so far successfully blocked the implementation while they continue to try to drag the case out in Superior court and now Supreme Court by objecting to discovery and other maneuvers.

For decades, proven technology has existed that would neutralize the pollutants from Saint Gobain that have been proven to work in North Carolina. Responsible manufacturers would have hired an engineer decades ago to neutralize the chemicals in their air emissions.

Yet still every single day, they emit their toxins unabated. We are trying to get an emergency meeting of our HB737 statutory commission because Saint Gobain is trying, right now, to get even more time to pump their toxins into the air and water unabated - another year extension.

Another year extension, while the people pay for property diminution and sickness.

People who have the courage to stand up in court trying to get medical monitoring need our support, while their children or adult family members are getting sick and dying.

It's time for the people exposed to toxins to have the tools they need to slow down or head off chronic disease and cancer before it becomes stage 4 cancer while we are trying to stop the toxins from being released and make the polluters accountable.

I ask you to pass this important legislation, as is, to send a strong message from the legislature to the courts for the people of N.H.

Thank you for your consideration.

Best,

Mindi Messmer

Rye, N.H.

Mindi Messmer, PG, CG

Former New Hampshire House of Representatives, District 24 served on
Health, Human Services & Elderly Affairs Committee

Mobile: 603.498.8847 | email: mmessmer@me.com



June 23, 2020

Hon. Martha Hennessey, Chair
Senate Judiciary Committee
State House Room 100
Concord, NH

Re: Amendment 1548s to HB 1375 – An act relative to claims for medical monitoring

Dear Chair Hennessey,

On behalf of the American Property Casualty Insurance Association (APCIA)¹, a national trade association representing nearly 60 percent of the property/casualty marketplace, we would like to express serious concerns with the amendment to HB 1375 currently under consideration by the committee which would create a new private right of action for medical monitoring damages allegedly warranted by exposure to certain substances. We are concerned that the bill would negatively impact the business community and could have a chilling effect on New Hampshire's economy.

While the purpose section of the proposal asserts that a claim for medical monitoring is consistent with currently existing common law in the state of New Hampshire, this legislation would place New Hampshire among a small minority of states that recognize this broadly disfavored doctrine. In fact, the U.S. Supreme Court and most state and federal courts of last resort have rejected medical monitoring claims absent a present physical injury. In its 1997

¹ Effective January 1, 2019, the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCIAA) merged to form the American Property Casualty Insurance Association (APCI). Representing nearly 60 percent of the U.S. property casualty insurance market, APCI promotes and protects the viability of private competition for the benefit of consumers and insurers. APCI represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

decision in *Metro-North Commuter Rail v. Buckley*, the U.S. Supreme Court found that medical monitoring is unwarranted because:

1. There could be an avalanche of claims, creating potentially unlimited liability exposure for defendants.
2. A flood of less severe cases would drain the pool of resources available for meritorious claims by plaintiffs with serious, present injuries and adversely affect the allocation of scarce medical resources. This has been seen in the asbestos context, where bankruptcy trusts are paying pennies on the dollar to claimants with mesothelioma because of medical monitoring and other resources expended on claimants who are not truly sick.
3. There are several public policy concerns that weigh against requiring medical monitoring, such as (a) difficulty in identifying which costs are over and above the preventative medicine ordinarily recommended for everyone; (b) conflicting testimony from medical professionals as to the benefit and appropriate timing of particular tests or treatments; and (c) each plaintiff's unique medical needs.
4. Requiring medical monitoring in one context would permit literally tens of millions of individuals to justify some form of substance-exposure-related medical monitoring.
5. Medical monitoring could lead to double recoveries because alternative, collateral sources of monitoring are often available, such as through employer-provided health insurance plans.

Due to similar concerns, medical monitoring legislation like this proposal has been rejected in the neighboring state of Vermont, having been vetoed by the Governor in 2018 and 2019. Governor Scott's 2018 veto message warned that *"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... 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."* He goes on to note that the bill *"...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."*

A stand-alone cause of action for medical monitoring would result in significant legal and economic difficulties even if it were narrowly defined. However, there are additional concerns with the proposal including the following:

- No standards for what constitutes a significant exposure.
- No requirement that an exposure violate applicable state or federal guidelines.
- No meaningful burden of proof, merely a “preponderance of the evidence” standard.
- No requirement of a probable link between exposure to a toxic substance and a latent disease.
- No requirement that a person’s exposure to a toxic substance significantly increases the risk of developing the latent disease.
- An overly broad definition of hazardous and toxic substances, and merely a preponderance of the evidence required to add other chemical or biological substances.
- No requirement that testing be considered reasonably necessary only if a disease would not be detected as part of routine diagnostic tests and medical examinations.
- No requirement that the purported benefits of the proposed medical monitoring be weighed against the costs or risks inherent in the monitoring procedure.

Given the broad scope of the legislation, businesses of any size (including small farms) and even individuals may be found liable for potentially costly medical monitoring and attorney’s fees in circumstances where any risk of illness or disease is only infinitesimally greater than that of the general public, and may not be susceptible to differentiation from illness or disease resulting from other causes.

The potentially massive impact on financial, medical, and judicial resources resulting from a flood of speculative claims for medical monitoring that lack a scientific foundation will pose a threat to the viability of businesses and the health of New Hampshire’s economy. In view of these concerns, we strongly urge you to NOT approve the proposed amendment to HB 1375.

Thank you for the opportunity to comment and share our concerns regarding this legislation. Please feel free to contact us if there are any questions or if additional information is needed.

Sincerely,



Alison Cooper
Vice President, State Government Relations
APCIA
Alison.Cooper@apci.org
518.462.1695

cc: Members of the Senate Judiciary Committee



American Tort Reform Association

1101 Connecticut Ave, NW ■ Suite 400 ■ Washington, DC 20036
(202) 682-1163 ■ Fax: (202) 682-1022 ■ www.atra.org

June 23, 2020

The Honorable Martha Hennessey
Senate Judiciary Committee
New Hampshire Senate
107 North Main Street
Concord, NH 03301

RE: Opposition to Unsound Medical Monitoring Legislation (House Bill 1375)

Dear Chairwoman Hennessey,

I am writing on behalf of the American Tort Reform Association (ATRA), which represents a broad-based coalition of businesses and other entities concerned about abuse of the civil justice system, to respectfully urge you to reject House Bill 1375. This legislation proposes to create a new legal right for people who are not sick and may never become ill to recover damages based on mere exposure to a substance that is only *potentially* harmful. If adopted, this legislation would subject countless New Hampshire businesses, individuals, and other entities to potentially massive new liability exposure. It would add to the already enormous economic toll the COVID-19 pandemic has had on businesses and other entities in the state.

Over the last twenty-five years, most states and the Supreme Court of the United States have rejected invitations to award damages to mere “exposure only” claimants who do not have any present physical injury. These courts have appreciated that awards for so-called medical monitoring raise a host of serious policy problems, including the depletion of resources for future claimants who become sick. The U.S. Supreme Court, for example, said that such claims, if permitted, could produce a “flood” of cases and result in “unlimited and unpredictable liability.”

In addition to inviting these overarching policy concerns, House Bill 1375 suffers numerous specific defects that make it particularly unsound public policy. Under the legislation, “any chemical or biological substance” that can be shown to be hazardous or toxic could give rise to a lawsuit. The bill, therefore, would apply to exposure to countless substances, regardless of whether a substance is recognized under state or federal law as hazardous.

House Bill 1375 expressly states that any person may recover medical monitoring damages based on exposure to a hazardous substance, with or without a present injury or disease. A claimant need only prove an increased risk of disease from “significant exposure” to a hazardous or toxic substance. The legislation also expressly states that a person “does not need to prove that the illness, disease, or latent disease is certain or likely to develop as a result of the exposure.”

The bill further provides that a person’s “[p]resent or past health status shall not be at issue in a claim for medical monitoring.” Consequently, if a person has a preexisting condition, for example a genetic predisposition to a disease, that information would appear to be unavailable

The Honorable Martha Hennessey
June 23, 2020
Page two of two

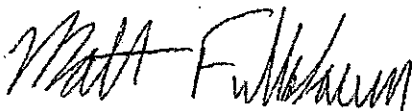
for use by a business or other entity in defending against a medical monitoring claim. For instance, if a person with a genetic predisposition to breast cancer brought a medical monitoring claim for exposure to an allegedly hazardous substance, House Bill 1375 would appear to bar a defendant from establishing that the person's increased risk of cancer was due to other factors such as genetics and not the exposure. Stripping away such basic defenses would allow liability to be imposed in a fundamentally unfair manner.

The result is a broad new statutory cause of action with relatively few safeguards to protect against abusive litigation. This concern for abuse is also heightened by several other bill provisions, including a provision authorizing claimants to recover their attorney fees in any successful medical monitoring action. The bill's inclusion of a three-year statute of limitations that appears to incorporate a subjective standard in which the limitations period is triggered only by a claimant's actual discovery of his or her exposure, as opposed to an objective standard based on when the claimant reasonably should have discovered an exposure, raises additional concern. The bill's provision that the "date when the hazardous or toxic substance was released is immaterial" for the purposes of the statute of limitations further suggests a purely subjective limitations period in which claims may be brought based on alleged exposures occurring many years or even decades in the past.

The adverse impacts of this legislation on businesses and other entities throughout the state could be enormous and add to the devastating economic impacts of the COVID-19 pandemic. The legislation would expose businesses to potentially massive new liability exposure overnight and could produce a flood of new litigation that strains judicial resources, drives up costs, leads to fewer jobs, and causes businesses to shutter or relocate. The full impact of the legislation may also be difficult to predict because no state has adopted such a broad statutory cause of action for medical monitoring.

For all of these reasons, ATRA strongly urges the Committee to reject House Bill 1375.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Fullenbaum". The signature is fluid and cursive, with the first name "Matt" being particularly prominent.

Matt Fullenbaum
Director of Legislation

Judiciary Members,

House Bill 661 is an important bill that would provide people with access to medical monitoring when they have been exposed to environmental toxins due to corporate negligence. Corporate giants like to drag this out in court, costing the people who have been made sick to spend a lot of money in legal fees - because they can.

This bill would send a clear message to the courts that the NH Legislature thinks people should have access to information about how to avoid illness and perhaps address medical conditions earlier.

Please vote yes to pass this important bill to the Senate.

ann podlipny

apodlipny57@comcast.net

98 Birch Rd

chester, New Hampshire 03036

Testimony of Rep. Mark McLean, Hillsborough 44, in support of HB 1375 – June 24, 2020

Dear Chairwoman Hennessey and Members of the Senate Judiciary Committee,

This letter is to convey my support for HB 1375 as amended by 2020-1548s. The amended bill seeks to provide a right of action to seek medical monitoring in the event of significant exposure to toxins resulting from negligence on the part of a defendant.

If you live in Merrimack, or Litchfield (which is one of the towns I represent), or the seacoast, you know what it is to have your community exposed to high levels of toxins, and to have to deal with the many consequences that follow from that.

It was due to concerns such as these that HB 661 (now included in HB 1375) was brought before House Judiciary in 2019. The bill as originally submitted sought a private right of action for toxin exposure, and was so broad and complex that a sub-committee was established to try to clean it up. The sub-committee met for six extremely comprehensive work sessions and spent a significant amount of time studying the case law in this area.

As chairman of the sub-committee I focused our attention on four main areas:

- 1) **The scope of the bill**
- 2) **The definition of a hazardous or toxic substance**
- 3) **The legal standard to be applied**
- 4) **The nature of the damages to be awarded**

1 – The scope of the bill

Due to the complexities and inconsistencies found in the private right of action section of the bill, the sub-committee, with the full blessing of the prime sponsor, immediately chose to narrow the scope of the bill to focus *exclusively on the medical monitoring component*.

In amongst the battery of concerns raised by an exposure to a toxic substance (environmental damage, loss of property values, etc.), it is reasonable to think that an exposed person might be concerned about the long-term health effects that they or their loved ones might experience. It is also reasonable to think that they might want to undergo periodic screening for any severe conditions associated with the exposure to increase the chances of early detection, *and* that they might seek to have any negligent persons or entities responsible for the exposure bear the cost.

Because the RSAs are silent in this area, this is the where the sub-committee chose to direct its focus.

2 – The definition of a hazardous or toxic substance

The amended bill defined toxic substances as those categorized as such by standards developed by the various federal agencies cited. These standards specify concentrations as well as the substances themselves. In addition, because knowledge may be gained and disseminated about the toxicity of a substance in advance of its inclusion into a formal standard, the amendment also allowed for an

uncategorized substance to be proven as hazardous or toxic based on a preponderance of the evidence. This final point raised a concern that those entities that judiciously follow the standards might be “blind-sided” by claims even though they thought they were in full compliance. This concern was addressed by developments within the legal standard to include the negligent conduct of the defendant.

3 – The legal standard to be applied

A few decades ago, there was no case law in favor of medical monitoring as it was often viewed that the harm had not yet manifested. As the understanding of the latent effects of exposure grew, this began to change. About a third of states now allow for medical monitoring claims in their case law, and the number is growing.

In 1984, the D.C. circuit court in *Friends for All Children vs Lockheed Aircraft* recognized that the plaintiffs were at risk for serious brain damage due to the negligence of the defendant, and that the need for medical monitoring was clear. 1987, the New Jersey Supreme Court, in *Ayers vs the Township of Jackson* ruled that medical surveillance is a compensable item of damages. At about the same time, the New Hampshire Supreme Court ruled against the plaintiff in *Bagley vs Controlled Environmental Corporation* because the plaintiff sought monitoring damages based upon strict liability. Increasingly it appeared that courts were open to claims for monitoring, *but not based upon strict liability*.

In West Virginia, a little over a decade later, *Bower vs Westinghouse Electric Corp* also awarded medical monitoring damages, and defined the standard that would be cited in monitoring cases throughout the country including in the *John Hermanns et al vs Textiles Coated Incorporated* case heard by the Hillsborough Superior Court in 2019. The standard put forth in the *Bower* case was that the plaintiff must prove that:

- A) He or she has, relative to the general population, been significantly exposed;
- B) To a proven hazardous substance;
- C) Through the tortious conduct of the defendant;
- D) As a proximate result of the exposure, the plaintiff has suffered an increased risk of contracting a serious latent disease;
- E) The increased risk of disease makes it reasonably necessary for the plaintiff to undergo periodic diagnostic medical examinations;
- F) Monitoring procedures exist that make early detection of a disease possible.

The sub-committee, after examining the case law, felt that while the awarding of damages for medical monitoring is a newer phenomenon, the standards applied have been remarkably consistent in their heavy reliance on *Bower*. Massachusetts, in the 2009 *Donovan vs Philip Morris USA, Inc* case, also granted an award for medical monitoring citing the tortious conduct of the defendant.

Given the consistency of the case law, the sub-committee set aside the strict liability standard in the original bill and replaced it with a negligence standard based largely on that put forth in the *Bower* decision. The sub-committee felt that this amendment allowed the legal standard expressed in the bill to be in harmony with the existing case law.

4 – The nature of the damages to be awarded

In 2009, the Chicago-Kent Law Review performed a review of the damages awarded in medical monitoring cases. They found that **“the medical monitoring remedy could be a breeding ground for plaintiff windfalls and misuse of funds”**. In the *Ayers* case, it was found that one plaintiff had spent his award on a new home, and many plaintiffs reported that they had never even visited a doctor even after being awarded the lump sum for medical monitoring. In contrast, the *Friends for All Children* court recognized the risk, and mandated that all money used for medical monitoring be drawn from an interest-bearing account that the defendants established. This approach proved to be far more successful in efficiently and effectively delivering the needed monitoring.

Following this example, courts have increasingly been establishing programs administered by a plan administrator. These programs have, among other things:

- 1) **Established panels to identify who will participate and what tests or procedures need to be performed.**
- 2) **Created notification processes sufficient to bring the opportunity for monitoring to the attention of affected persons.**
- 3) **Established time-frames for those eligible to maintain the monitoring.**

Given the difficulties presented to the individual plaintiff should they need to navigate their own way through to a solid medical monitoring plan, the court program approach can be very effective.

In recognition of the potential for waste and abuse in the awarding of damages, the sub-committee’s amendment was careful to limit the damages to what was medically necessary, and gave the courts the option to place the award into a court supervised program administered by one or more medical professionals.

Summary

The amended version of this bill provides a roadmap that clarifies the rights and responsibilities of all parties involved in a claim for medical monitoring. It clearly states that exposed parties have the right to pursue a monitoring claim, but it also provides those who handle chemicals with a clear standard with which to comply.

While the right to sue for environmental damage and loss of property value does exist, the right to sue for medical monitoring has been more nebulous because the health effects (cancer, etc.) have not yet manifested themselves. ***This bill eliminates that ambiguity.*** It holds negligent chemical users accountable, protects users who operate in good faith and compliance with the law, and provides a much-needed legal remedy for monitoring to those who are exposed. I hope that you will pass the bill without further amendment.

Respectfully submitted, Mark McLean, Hills 44

Jennifer Horgan

From: Marjorie Smith
Sent: Wednesday, June 24, 2020 8:13 AM
To: ~Senate Judiciary Committee
Cc: Renny Cushing; Mark McLean
Subject: Amendment 1548S to HB1375

Dear Senate colleagues,

I am bereft that all my efforts to join the webinar this morning were unsuccessful.

This bill was the result of more than a year of work on the part of House Judiciary and is one of our priority bills under the current circumstances. I urge you to read the detailed testimony of Representative Mark McLean and hope you conclude that you should adopt the language with no additional amendments. As the language comes to you, it achieves a balance among all the competing interests.

Respectfully,

Marjorie Smith, Chair, House Judiciary Committee

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB1375

Hearing date: _____

Executive session date: _____

Motion of: 1548

VOTE: 3-2 (Carson French)

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input checked="" type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input checked="" type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

Motion of: OTPA

VOTE: 3-2 (Carson French)

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input checked="" type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input type="checkbox"/>	Levesque <input checked="" type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Hennessey, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Chandley, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Carson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Levesque	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, June 24, 2020

THE COMMITTEE ON Judiciary

to which was referred **HB 1375**

AN ACT

relative to cancellations of commercial insurance policies.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-2

AMENDMENT # 2020-1568s

Senator Shannon Chandley
For the Committee

Jennifer Horgan 271-2609

JUDICIARY

HB 1375, relative to cancellations of commercial insurance policies.

Ought to Pass with Amendment, Vote 3-2.

Senator Shannon Chandley for the committee.

General Court of New Hampshire - Bill Status System

Docket of HB1375

Docket Abbreviations

Bill Title: (New Title) relative to claims for medical monitoring.**Official Docket of HB1375.:**

Date	Body	Description
12/2/2019	H	Introduced 01/08/2020 and referred to Commerce and Consumer Affairs HJ 1 P. 20
1/10/2020	H	Public Hearing: 01/16/2020 09:00 am LOB 302
1/22/2020	H	Subcommittee Work Session: 02/03/2020 01:00 pm LOB 302
1/23/2020	H	Executive Session: 02/04/2020 10:00 am LOB 302
2/12/2020	H	Committee Report: Ought to Pass for 02/19/2020 (Vote 19-1; CC) HC 7 P. 3
2/19/2020	H	Ought to Pass: MA VV 02/19/2020 HJ 4 P. 3
3/12/2020	S	Introduced 03/11/2020 and Referred to Commerce; SJ 7
6/18/2020	S	HB 1375 is vacated from Commerce and referred to Judiciary; (In recess 06/16/2020); SJ 9
6/19/2020	S	Remote Hearing: 06/24/2020, 08:00 am; SC 24
6/19/2020	S	Remote Hearing: 06/24/2020, 08:05 am, on proposed amendment #2020-1548s; SC 24
6/19/2020	S	Committee members will receive secure Zoom invitations via email. SC 24
6/19/2020	S	Members of the public may attend using the following links: SC 24
6/19/2020	S	1. To sign-in and/or speak in support or opposition, please register in advance by using this link: https://www.zoom.us/webinar/register/WN_QH1esiFMQNC5q9CjM50_jA SC 24
6/19/2020	S	2. To submit your testimony to the committee, please send all documents via email to remotesenate@leg.state.nh.us SC 24
6/19/2020	S	3. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799, or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833 SC 24
6/19/2020	S	4. Or iPhone one-tap: 13126266799,,94954573376# or 19292056099,,94954573376# SC 24
6/19/2020	S	5. Webinar ID: 949 5457 3376 SC 24
6/19/2020	S	6. To view/listen to this hearing on YouTube, use this link: https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA SC 24
6/19/2020	S	The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-3043). SC 24
6/24/2020	S	Committee Report: Ought to Pass with Amendment #2020-1568s , 06/29/2020; SC 25
6/29/2020	S	Committee Amendment #2020-1568s , RC 14Y-10N, AA; 06/29/2020; SJ 9
6/29/2020	S	Ought to Pass with Amendment 2020-1568s, MA, VV; OT3rdg; 06/29/2020; SJ 9
6/30/2020	H	House Concurs with Senate Amendment (Rep. Butler): MA RC 227-105 06/30/2020

7/10/2020	S	Enrolled (In recess 06/29/2020); SJ 9
7/10/2020	H	Enrolled 06/30/2020 HJ 10

NH House	NH Senate
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Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB1375

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: (Legislative Aides)

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: (Legislative Aides)

All amendments considered in committee (including those not adopted):

- amendment # 1568s - amendment # _____

- amendment # 1548s - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: (Clerk's Office)

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____

- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) (Clerk's Office)

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: (Clerk's Office)

as amended by the senate as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgan
Committee Aide

7/23/20
Date

Senate Clerk's Office jm