

Committee Report

REGULAR CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Judiciary to which
was referred HB 368,**

AN ACT relative to claims for medical monitoring.

**Having considered the same, report the same with the
following amendment, and the recommendation that
the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark McLean

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 368
Title:	relative to claims for medical monitoring.
Date:	March 2, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2021-0494

STATEMENT OF INTENT

This bill seeks to provide a right of action to seek medical monitoring in the event of significant exposure to toxins caused by the negligent activity of a defendant. Medical monitoring claims are relatively new to the legal landscape and have only really emerged in the last few decades. Nevertheless, our expanding understanding of the long-term negative health effects of toxin exposure has led to a sea change in legal thinking in this area, and courts in New England and across the country have increasingly allowed claims to proceed. With this in mind, this bill provides guidance and clarity relative to the rights and responsibilities of all parties involved in a monitoring claim. The committee was careful to base the legal standard on the growing body of case law in the area, including the *Hermens v. Textiles Coated Incorporated* case heard in Hillsborough Superior court, and the case of the residents of Bennington, *Vermont v. Saint-Gobain Performance Plastics Corporation*. The bill preserves the need to show negligence and causation on the part of the defendant, and the amendment further requires that the plaintiff demonstrate a significantly increased health risk from exposure that requires monitoring for which tests exist. The final amended bill 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.

Vote 13-7.

Rep. Mark McLean
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 368, relative to claims for medical monitoring. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Mark McLean for the **Majority** of Judiciary. This bill seeks to provide a right of action to seek medical monitoring in the event of significant exposure to toxins caused by the negligent activity of a defendant. Medical monitoring claims are relatively new to the legal landscape and have only really emerged in the last few decades. Nevertheless, our expanding understanding of the long-term negative health effects of toxin exposure has led to a sea change in legal thinking in this area, and courts in New England and across the country have increasingly allowed claims to proceed. With this in mind, this bill provides guidance and clarity relative to the rights and responsibilities of all parties involved in a monitoring claim. The committee was careful to base the legal standard on the growing body of case law in the area, including the *Hermens v. Textiles Coated Incorporated* case heard in Hillsborough Superior court, and the case of the residents of Bennington, *Vermont v. Saint-Gobain Performance Plastics Corporation*. The bill preserves the need to show negligence and causation on the part of the defendant, and the amendment further requires that the plaintiff demonstrate a significantly increased health risk from exposure that requires monitoring for which tests exist. The final amended bill 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. **Vote 13-7.**

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

March 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Judiciary to which
was referred HB 368,

AN ACT relative to claims for medical monitoring.

Having considered the same, and being unable to agree
with the Majority, report with the following resolution:

RESOLVED, that it is **INEXPEDIENT TO LEGISLATE**.

Rep. Kurt Wuelper

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 368
Title:	relative to claims for medical monitoring.
Date:	March 2, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The minority recognizes there are health risks associated with toxic exposure and it also recognizes there are boundaries around damage claims. The standard for damages has always been some actual damage; damage that could be assessed in some reasonable manner upon which claims can be adjudicated. Medical monitoring creates an entirely new standard where damages can be claimed for events that may never occur simply because people are put at increased risk of something that may or may not happen at some unspecified future time. Such a claim has no end time, no limit on the potential cost, and no reasonable way of evaluating the potential damages. Any money paid for potential, but never occurring, events reduces the money available for those who actually suffer the real damages of the exposure.

Rep. Kurt Wuelper
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 368, relative to claims for medical monitoring. **INEXPEDIENT TO LEGISLATE.**

Rep. Kurt Wuelper for the **Minority** of Judiciary. The minority recognizes there are health risks associated with toxic exposure and it also recognizes there are boundaries around damage claims. The standard for damages has always been some actual damage; damage that could be assessed in some reasonable manner upon which claims can be adjudicated. Medical monitoring creates an entirely new standard where damages can be claimed for events that may never occur simply because people are put at increased risk of something that may or may not happen at some unspecified future time. Such a claim has no end time, no limit on the potential cost, and no reasonable way of evaluating the potential damages. Any money paid for potential, but never occurring, events reduces the money available for those who actually suffer the real damages of the exposure.

Original: House Clerk
Cc: Committee Bill File

Rep. McLean, Hills. 44
February 24, 2021
2021-0494h
11/04

Amendment to HB 368

1 Amend RSA 125-T:3, I(b) as inserted by section 1 of the bill by replacing it with the following:

2

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

Voting Sheets

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK



1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report

2021 SESSION

Judiciary

Bill #: **HB 368** Motion: OTPA AM #: 0494h Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman		9	
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.		1	
Wuelper, Kurt F. Clerk		2	
Alexander, Joe H.		3	
Rice, Kimberly A.			
Silber, Norman J. Smith, Steven		4	
Greene, Bob J.		5	
Kelley, Diane E.		6	
Tausch, Lindsay		7	
Trottier, Douglas R.		8	
Smith, Marjorie K.	2		
Berch, Paul S.	3		
Horrigan, Timothy O.	4		
DiLorenzo, Charlotte I.	5		
Chase, Wendy	6		
Kenney, Cam E.	7		
Langley, Diane M.	8		
McBeath, Rebecca Susan	9		
Paige, Mark	10		
Simpson, Alexis	11		
TOTAL VOTE:	11	9	

Rep Kurt Wuelper *Kurt Wuelper*

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB368

BILL TITLE: relative to relative to claims for medical monitoring.

DATE:2/16/2021

LOB ROOM: Remote **Time Public Hearing Called to Order:** 11:00 AM
Time Adjourned: 11:44 AM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors: Rep. Cushing

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

* **Rep. Cushing,** Rock. 21 Sponsor This bill was before this committee for the past several years. The language before you was crafted by this committee and I am tempted to just read the Ought to Pass with Amendment committee report from last year. This bill makes it easier for those exposed to toxic substances before the appearance of any specific outcome. Q Alexander-Is this an exact copy of what passed last year? A Yes Q McLean- Last year's bill was vetoed by the Governor and that veto was sustained. What has changed? A The passage of time has exposed more effects and makes the bill more urgent.

***Chris Appel** American Tort Reform Association Opposes Medical monitoring allows one to get monitoring when no actual injury is evident and may never become evident. This is an entirely new standard in tort laws. A similar situation is the asbestos case. Today the trust fund can only pay pennies on the dollar to victims with very serious consequences. There are no safeguards in the bill. Stripping away typical defenses results in an unjust system. The lump sum provision encourages people to settle claims just to get some money for whatever purpose. The bill has a subjective standard as opposed to an objective one. Claims can be brought based upon alleged exposure from many years in the past. Q Smith-What percent of the NH casualty market you represent? A I actually represent the tort reform Association. Q Gordon-Are there members of your association in NH? A I suppose so. Q Paige-Your written testimony refers to a case without citation. Can you fill that gap? A I actually only speak to one decision by the Supreme court Q do you find the money makes much difference to damaged families? The Tort system does the best it can to right a wrong, but who can put a value on losing a loved one. When you have unimpaired claimants, it puts a huge strain on the system and would result in injustice. Only 5 states recognize a cause of action for medical monitoring. Q Can you provide citations to the committee? A Do you want a citation for every state that has rejected medical monitoring? I can provide that. Q Horrigan-can you clarify your position? A The standard in tort laws is that an actual injury must have happened. Adopting the standard in this bill opens to door to so many complaints with no actual harm reduces the money available to those who have actually suffered from their exposure. Q doesn't new standard help eliminate a problem like asbestos while the problem is small? A I guess you have to balance that against the disservice to those who actually contract a serious illness later on. Q McLean-in the asbestos situation you say put a hundred companies out of business was heir a negligence part of those claims? A I expect there was Q in the City of Chicago case your reference can you share some of those details? A it was a case about lead in the water lines in Chicago that resulted in the changing of many/all water lines in Chicago. The court ruled there was good reason to require an actual damage before claims could be made. West Virginia, for example, has adopted that standard for asbestos claims.

Wendy Thomas Merrimack Supports The bill allows claims if one has been exposed to a know dangerous chemical. My house has been on bottled water for 5 years. Our well is still testing at 3 times the allowable PFAS level My family has never been tested for how much PFAS is in our bodies even though we know PFAS causes many health effects. WE need this monitoring because of this long-term exposure to a know hazard. If we have a right to know how much is in our water, surely, we have a right to know how much is in our bodies. Q Sylvia-Why is testing not available-do you know the cost of such a test? A I know the test did cost \$400, but many physicians don't know anything about PFAS-its effects or what tests may be available. Q If doctors don't know what to look for what will monitoring mean? A Part of it would be educating the medical community.

Midi Messner Supports This bill would signal to the court that a medical monitoring system is needed not only for PFAS but for other hazardous chemicals. It will avoid the burden on the health care system if those exposures develop into much larger populations. A large study indicated many serious consequences of PFAS exposure. Early monitoring could reduce the cost and burden on the health care system. In the Seacoast, thousands of people are known to have been exposed and have

high PFAS levels in their bodies Only about 218 people from Merrimack were tested and that showed that they had twice the national average of PFAS in their systems, making them at higher risk of several cancers. Early detection of these known outcomes from PFAS, etc. exposure could drastically reduce the cost and ethe effects on people. Q McBeath-Do you have data on early detection/early treatment costs compared to the cost of testing? A I expect that the cost savings would be significant.



Rep Kurt Wuelper

House Remote Testify

Judiciary Committee Testify List for Bill HB368 on 2021-02-16

Support: 131 Oppose: 13 Neutral: 1 Total to Testify: 2

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<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Appel, Chris	cappel@shb.com	A Member of the Public	American Tort Reform Association	Oppose	Yes (6m)	No	2/12/2021 6:20 PM
Thomas, Wendy	wethomas@gmail.com	A Member of the Public	Myself	Support	Yes (3m)	No	2/15/2021 8:31 AM
Jachim, Nancy	nancyjachim@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 8:59 AM
Dontonville, Roger	rdontonville@gmail.com	An Elected Official	Myself	Support	No	No	2/15/2021 9:06 AM
Pereira, Leah	Leah@thepereiras.net	A Member of the Public	Myself	Support	No	No	2/15/2021 6:41 AM
Garland, Ann	annhgarland@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 6:41 AM
Mooney, Rep. Maureen	Rep.Maureen.Mooney@gmail.com	An Elected Official	Myself/Town of Merrimack	Support	No	No	2/15/2021 10:31 AM
Torpey, Jeanne	jtorp51@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 9:31 AM
Wilder, Tom	tbwilder@yahoo.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:42 AM
Hinebauch, Mel	melhinebauch@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:45 AM
Dewey, Karen	pkdewey@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 9:53 AM
Falk, Cheri	Falk.cj@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:15 PM
Podlipny, Ann	apodlipny57@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 5:24 PM
Jones, Jennifer	jennjones123@hotmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:24 PM
Vincent, Laura	lvlauravincen5@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:43 PM
Cooper, Alison	alison.cooper@apci.org	A Lobbyist	American Property Casualty Insurance Association	Oppose	No	No	2/15/2021 11:06 AM
Larson, Ruth	ruthlarson@msn.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:16 AM
Ballentine, John M	mikeb@btine.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:23 AM
Anderson, Keryn	kerynlanderson@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:40 AM

Hackmann, Kent	hackmann@uidaho.edu	A Member of the Public	Myself	Support	No	No	2/15/2021 11:53 AM
Bouchard, Donald	donalddbouchard@gmail.com	An Elected Official	Myself	Support	No	No	2/15/2021 12:10 PM
Goldman, Ann	johngold@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 12:38 PM
Healey, Robert	Bob.Healey@leg.state.nh.us	An Elected Official	Town of Merrimack	Support	No	No	2/15/2021 12:58 PM
Moulton, Candace	candaceleighm@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 1:03 PM
woodcock, stephen	slwoodcock116@gmail.com	An Elected Official	Myself	Support	No	No	2/15/2021 1:37 PM
Meuse, David	David.Meuse@leg.state.nh.us	An Elected Official	Rockingham 29	Support	No	No	2/15/2021 2:26 PM
Jakubowski, Deborah	Dendeb146@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 2:31 PM
jakubowski, dennis	dendeb146@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 2:31 PM
Frost, Sherry	sherry.frost@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/15/2021 2:31 PM
Dutzy, Sherry	sherry.dutzy@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/15/2021 2:32 PM
Thomas, Elaine	thomas.marshall@comcast.net	An Elected Official	Myself	Support	No	No	2/15/2021 2:35 PM
Groetzinger, Tonda	groetzinger6@aol.com	A Member of the Public	Myself	Oppose	No	No	2/15/2021 2:42 PM
Stewart, Rosemary	rmy.stewart@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 2:48 PM
Hayward, Marcia	mjhayward131@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 3:02 PM
Fedorchak, Gaye	gayevf@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 3:37 PM
McCue, Dara	daramccue@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 4:14 PM
Hope, Lucinda	lmhope46@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 4:17 PM
Grassie, Chuck	chuck.grassie@leg.state.nh.us	An Elected Official	Strafford 11	Support	No	No	2/15/2021 4:36 PM
Konze, Margaret	maggiekonze@yahoo.com	A Member of the Public	Myself	Support	No	No	2/15/2021 4:49 PM
Murphy, Alyssa	manypennymurphy@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 4:58 PM
thompson, julie	maple371@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:02 PM
Gushta, Sheri	sherigushta@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:04 PM
McLaughlin, Barbara	brbmclaughlin42@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:08 PM
Bickford, Pia	piabickford@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 5:12 PM
Willing, Maura	Maura.Willing@Comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 7:15 PM
Carole, Kimberly	Mskimberlycarole@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 7:17 PM

Brennan, Nancy	burningnan14@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 6:04 PM
Connolly, Brenna	connolly.brenna@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 6:23 PM
Thomas, Sally	Sallythomas@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 6:26 PM
Wallace, Robert	robert.wallace.100@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 7:27 PM
Cutshall, Catherine	vivadofamily@aol.com	A Member of the Public	Myself	Support	No	No	2/15/2021 7:30 PM
Vivado, Mauricio	maumajo@aol.com	A Member of the Public	Myself	Support	No	No	2/15/2021 7:31 PM
Wallace, Dawn	Dawn.wallace.100@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 7:38 PM
Robbins, Annie	anniemrobbins@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 7:45 PM
QUISUMBING-KING, CORA	coraq@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 7:51 PM
Donovan, Hugh	Hugh.donovan@juno.com	A Member of the Public	Myself	Support	No	No	2/15/2021 7:55 PM
Wells, Ken	kenwells3@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 8:08 PM
Thompson, Laura	nicmom@hotmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 8:11 PM
Platt, Elizabeth-Anne	lizanneplatt09@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 8:24 PM
King, Walter	genedocwk@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 8:29 PM
Millman, Linda	jdm73@phreego.,com	A Member of the Public	Myself	Support	No	No	2/15/2021 8:30 PM
Pelletier, Kathleen	kpelletier01@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 8:44 PM
Pedersen, Michael	PedersenUSA@aim.com	An Elected Official	Hillsborough 32	Support	No	No	2/15/2021 8:45 PM
Pelletier, Richard	rpelletier01@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 8:46 PM
Mitchell, Karen	kmitchell5@myfairpoint.net	A Member of the Public	Myself	Support	No	No	2/15/2021 8:47 PM
Donovan, Julie	julie.donovan@juno.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:04 PM
Spencer, Louise	kentstusa@aol.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:08 PM
Spencer, Rob	kentstusa@aol.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:09 PM
Richman, Susan	susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:14 PM
DeMark, Richard	demarknh114@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:14 PM
Coon, Kate	kate2coon@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:27 PM
Zaenglein, Barbara	bzaenglein@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:32 PM
Zaenglein, Eric	henley11@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 9:33 PM

Zajano, Emily	emzajano@aol.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:35 PM
Crichton, Lucy	Lucycrichton@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 9:47 PM
Murphy, Hon. Nancy	murphy.nancya@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 9:52 PM
Bartlett, Rep Christy	christydbartlett@gmail.com	An Elected Official	Merrimack 19	Support	No	No	2/15/2021 9:58 PM
Jamback, Susan	susanjamback@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 10:10 PM
Covert, Susan	scovert@comcast.net	A Member of the Public	Myself	Support	No	No	2/15/2021 10:12 PM
Clark, Denise	denise.m.clark03055@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 10:21 PM
Stevens, Representative Deb	debstevens4ward7@gmail.com	An Elected Official	My 10K constituents	Support	No	No	2/15/2021 10:47 PM
Jones, Stephanie	stephaniermjones@gmail.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:00 PM
barnes, ken	kbarnes@kenbarneslaw.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:14 PM
ARONSON, LAURA	laura@mlans.net	A Member of the Public	Myself	Support	No	No	2/15/2021 11:14 PM
Reed, Barbara	moragmcp83@outlook.com	A Member of the Public	Myself	Support	No	No	2/15/2021 11:15 PM
Arnold, Neil	krisarn@myfairpoint.net	A Member of the Public	Myself	Support	No	No	2/15/2021 11:57 PM
Schmitt, Cheri	cherischmitt@comcast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 9:38 AM
Pierpont, Nancy	nancy-pape@comcast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 6:17 AM
Couture, Matthew	coochdog@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 6:42 AM
Saum, Judith	judithsaum@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 6:42 AM
Heslin, Mary	mlheslin@yahoo.com	A Member of the Public	Myself	Support	No	No	2/16/2021 7:04 AM
Spielman, Kathy	jspielman@comcast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 7:09 AM
Spielman, James	jspielman@comcast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 7:09 AM
Carmichael, Lindsey	lindseycarmichael@comcast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 7:34 AM
St Germain, Diane	diane.stgermain33@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 7:37 AM
Ingraham, Sheryl	sheryl.ingraham@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 7:52 AM
Kiefner, Robert	rskiefner@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 7:53 AM
Belanger, Ellen	nanaellen19@comcast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 8:07 AM
Chen, Melinda	maestrachen@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 8:13 AM
Petruccelli, Maxine		A Member of the Public	Myself	Support	No	No	2/16/2021 8:37 AM

	maxinepet@gmail.com							
Petrucelli, Charles	chasmaxpet@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 8:39 AM	
Osborne, Jason	houstorepoffice@leg.state.nh.us	An Elected Official	Myself	Oppose	No	No	2/16/2021 8:39 AM	
Kubit, Joy	joykubit@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 8:42 AM	
Raspiller, Cindy	raspicl@hotmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 8:55 AM	
perez, maria	mariaeli63@gmail.com	An Elected Official	District 23	Support	No	No	2/16/2021 9:02 AM	
Messmer, Mindi	mmessmer@me.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:13 AM	
Jones, Andrew	arj11718@yahoo.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:18 AM	
HOUGH, GREGG	GreggHough2020@gmail.com	An Elected Official	Myself	Oppose	No	No	2/16/2021 9:18 AM	
Gunski, Michael	michael.gunski@leg.state.nh.us	An Elected Official	Hillsborough 6, Goffstown	Oppose	No	No	2/16/2021 9:26 AM	
Keeler, Margaret	peg5keeler@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:29 AM	
BRYK, WILLIAM	wmbryk@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:47 AM	
Janeway, Elizabeth	Ecjway1@aol.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:48 AM	
Lucas, Janet	janluca1953@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 9:56 AM	
Smith, Greg	gsmith@mclane.com	A Lobbyist	Waste Management	Oppose	No	No	2/16/2021 10:04 AM	
Qualey, Jim	jimqualeyforhn@gmail.com	An Elected Official	Myself	Oppose	No	No	2/16/2021 10:09 AM	
Sheehan, Vanessa	vsheehan16@yahoo.com	An Elected Official	Myself	Oppose	No	No	2/16/2021 10:12 AM	
Boyd, Bill	bboyd@merrimacknh.gov	An Elected Official	Myself	Support	No	No	2/16/2021 10:15 AM	
dostie, donald	dadostietrucking@gmail.com	An Elected Official	Myself	Oppose	No	No	2/16/2021 10:39 AM	
Edwards, Jesse	secure4posterity@yahoo.com	A Member of the Public	Myself	Oppose	No	No	2/16/2021 10:43 AM	
Love, Rep.David	davidlove4rep@gmail.com	An Elected Official	Rockingham 6	Oppose	No	No	2/16/2021 10:43 AM	
Edgar, Michael	amedgar@comcast.net	An Elected Official	Myself	Support	No	No	2/16/2021 11:04 AM	
Tuthill, John	jtuthill@sover.net	A Member of the Public	Myself	Support	No	No	2/16/2021 11:57 AM	
Draper, Barry	bgd@metrocast.net	A Member of the Public	Myself	Support	No	No	2/16/2021 12:13 PM	
Dodge, Corinne	corinnedodge@hotmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 12:53 PM	
THEBERGE, ROBERT	rolath@hotmail.com	An Elected Official	Myself	Oppose	No	No	2/16/2021 1:39 PM	
Peirce, William	wf5@yahoo.com	A Member of the Public	Myself	Neutral	No	No	2/16/2021 2:36 PM	

Murray, Kate	dr.karma2000@gmail.com	An Elected Official	Myself	Support	No	No	2/16/2021 3:50 PM
Koch, Helmut	helmut.koch.2001@gmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 5:44 PM
Russell, John	jmrussell63@yahoo.com	A Member of the Public	Myself	Support	No	No	2/16/2021 6:00 PM
Klee, Patricia	Patricia.Klee@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/16/2021 7:22 PM
Mayne, Kenneth	kbmayne@protonmail.com	A Member of the Public	Myself	Support	No	No	2/16/2021 7:23 PM
Sherman, Senator Tom	jennifer.horgan@leg.state.nh.us	An Elected Official	SD 24	Support	No	No	2/12/2021 2:54 PM
Chase, Wendy	wendy.chase@leg.state.nh.us	An Elected Official	Myself	Support	No	No	2/13/2021 1:47 PM
Hamer, Heidi	hhamer59@aol.com	An Elected Official	Myself	Support	No	No	2/13/2021 1:52 PM
Fordey, Nicole	nikkif610@gmail.com	A Member of the Public	Myself	Support	No	No	2/13/2021 8:15 PM
Hamblet, Joan	joan.hamblet@leg.state.nh.us	A Member of the Public	Myself	Support	No	No	2/14/2021 3:10 PM
Gagnon, Katie	Katie_gagnon@hotmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 6:25 PM
Gagnon, Chris	Cwgagnon2@gmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 6:29 PM
Aiken Hobbs, Alyson	aaikenhobbs@yahoo.com	A Member of the Public	Myself	Support	No	No	2/14/2021 6:42 PM
Damon, Claudia	cordsdamon@gmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 8:50 PM
Holmy, Craig	cholmy@hotmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 4:47 PM
Westlake, Jane	janewestlake57@gmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 7:23 PM
Cook, Barbara D	bdc7@aol.com	A Member of the Public	Myself	Support	No	No	2/15/2021 7:42 AM
Fallon, Michael	21dirtroad@gmail.com	A Member of the Public	Myself	Support	No	No	2/14/2021 10:20 PM
Allen, Laurene	alarene@gmail.com	A Member of the Public	Myself	Support	No	No	2/10/2021 10:55 PM

Testimony



February 15, 2021

Hon. Edward Gordon, Chair
House Judiciary Committee
LOB Room 208
Concord, NH

Re: HB 368 – An act relative to claims for medical monitoring

Dear Chairman Gordon,

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 HB 368, 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 decision in *Metro-North Commuter Rail v. Buckley*, the U.S. Supreme Court found that medical monitoring is unwarranted because:

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.

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.

Governor Sununu vetoed a similar proposal in 2020 and expressed concerns regarding the potential impact on businesses and consumers in New Hampshire. These concerns still exist as they relate to HB 368. Medical monitoring legislation has also 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 HB 368.

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 House Judiciary Committee

February 15, 2021

House Judiciary Committee
New Hampshire House of Representatives
107 North Main Street
Concord, NH 03301

RE: Opposition to Unsound Medical Monitoring Legislation (HB 368)

Dear Chairman Gordon,

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 HB 368. 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, HB 368 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.

HB 368 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 illness 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 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, HB 368 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. The legislation would expressly allow claimants to recover their attorney fees in a successful medical monitoring action. It would also give a court the option of awarding damages for monitoring as a “lump sum” instead of requiring that funds be placed in a court-supervised program administered by one or more medical professionals.

In addition, the bill’s inclusion of a three-year statute of limitations appears to incorporate a subjective standard in which the limitations period may 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. 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 subject 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 HB 368.

Sincerely,

Christopher E. Appel
Attorney
Shook, Hardy & Bacon L.L.P.
Washington, DC

Testifying on behalf of American Tort
Reform Association

HB368 Testimony

Dear Chairman Gordon and Members of the House Judiciary Committee:

On behalf of our client, the American Property Casualty Insurance Association, enclosed please find testimony opposed to House Bill 368, relative to claims for medical monitoring.

Thank you,
Lindsay

Lindsay E. Nadeau
Admitted in NH and MA

Orr&Reno
Sustained Excellence for over 70 years.

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Good afternoon,

Tomorrow at 11 am HB 368, a bill to allow for a claim for medical monitoring if an identified responsible party is found by the state to have caused exposure to a hazardous or toxic substance which puts a plaintiff at increased risk of illness or disease will be heard by your committee. I would ask you each to lend your support to this bill which is very important to residents in my town, Merrimack as well as residents in the 65 square mile radius around Saint Gobain Performance Plastics that have been and continue to be exposed to PFAS. We have been exposed to ongoing levels of PFAS in our drinking water deemed unsafe by the state of NH and throughout the investigation that started in March of 2016, the state of NH has stated that they do not have the ability or resources to provide blood tests access, gather information about health impacts to families in known high exposure areas or provide the bio monitoring that would be expected. It is the opinion of all Merrimack residents that when there is a responsible party identified that has caused our exposure to a class of chemicals known to be highly disruptive to health, they, and not the state of NH, should be responsible for monitoring the health of impacted residents.

A random blood sampling of Merrimack residents 2-3 times the expected level of PFAS in blood serum and also found statistical significance for even higher levels for those who live in the 1.5 area closest to Saint Gobain. Health disruptions and diagnoses in families, including infants and children are being noted by residents in impacted areas and the need for health monitoring is crucial so health conditions that would not be expected can be identified and treated before they progress. The list of health conditions known to be associated with PFAS and other hazardous chemical exposure is well established and the body of information is rapidly evolving. Passing a bill such as HB 368 would also send a message to potential polluters of our communities that better practices of emissions, runoff, outfall and discharges to the environment must be incorporated into their day to day operations as the consequences to human health can be a great deterrent.

HB368 Testimony

Thank you for the work you do on behalf of NH residents,
Laurene Allen
Merrimack resident
Cofounder, Merrimack Citizens for Clean Water
Cleanwaternh.org

Dear Committee Members,

As part of my testimony via Zoom earlier today, I was asked to provide some citations to judicial decisions rejecting medical monitoring for unimpaired claimants. Below is a list of citations to court decisions (and in the case of Louisiana statutory law) rejecting medical monitoring damages for the uninjured. It is by no means a comprehensive list, but hopefully it underscores the point that medical monitoring absent an existing injury has been widely rejected.

It is also worth noting that there is no case law in a number of states with respect to medical monitoring; a fact that could suggest the unavailability of such claims given that medical monitoring claims have been asserted around the country for around four decades and never adopted in those jurisdictions.

Lastly, the U.S. Supreme Court case I referenced during my oral testimony and in my written testimony is *Metro-North Commuter R.R. Co. v Buckley*, 521 U.S. 424 (1997), which rejected a medical monitoring remedy under the Federal Employers' Liability Act (FELA).

Berry v. City of Chicago, 2020 IL 124999 (Ill. Sept. 24, 2020)
Pickrell v. Sorin Group USA, Inc., 293 F. Supp. 3d 865 (S.D. Iowa 2018)
Caronia v. Philip Morris USA, Inc., 5 N.E.3d 11 (N.Y. 2013)
McCormick v. Halliburton Co., 895 F. Supp. 2d 1152, 1158 (W.D. Okla. 2012)
Alsteen v. Wauleco, Inc., 802 N.W.2d 212, 223 (Wis. Ct. App.), *review denied*, 808 N.W.2d 715 (Wis. 2011)
Lowe v. Philip Morris USA, Inc., 183 P.2d 181 (Or. 2008)
Parker v. Brush Wellman, Inc., 377 F. Supp. 2d 1290, 1302 (N.D. Ga. 2005), *aff'd*, 230 F. App'x 878, 883 (11th Cir. 2007)
Pisciotta v. Old Nat'l Bancorp, 499 F.3d 629 (7th Cir. 2007) (Indiana law)
Curl v. American Multimedia, Inc., 654 S.E.2d 76 (N.C. Ct. App. 2007)
Paz v. Brush Engineered Materials, Inc., 949 So. 2d 1 (Miss. 2007)
Norwood v. Raytheon Co., 414 F. Supp. 2d 659 (W.D. Tex. 2006)
Henry v. Dow Chem. Co., 701 N.W.2d 684 (Mich. 2005)
Mehl v. Canadian Pac. Ry., 227 F.R.D. 505 (D.N.D. 2005)
Wood v. Wyeth-Averest Labs. Div. of Am. Home Prods., 82 S.W.3d 849 (Ky. 2002)
Hinton v. Monsanto, 813 So. 2d 827 (Ala. 2001)
Rosmer v. Pfizer, Inc., 2001 WL 34010613 (D.S.C. 2001)
Trimble v. Asarco, Inc., 232 F.3d 946 (8th Cir. 2000) (Nebraska law)
La. Civ. Code Ann. Art 2315 (rejecting medical monitoring absent a present injury after July 9, 1999)
Ball v. Joy Tech., Inc., 958 F.2d 36 (4th Cir. 1991) (Virginia law)
Mergenthaler v. Asbestos Corp. of Am., 480 A.2d 647 (Del. 1984)

Please let me know if you have any questions. Thank you again for the privilege of testifying before the Committee.

HB368 Testimony

Kind regards,
Chris

Christopher E. Appel

Of Counsel

Shook, Hardy & Bacon L.L.P.
1800 K Street, NW, Suite 1000
Washington, DC 20006-2202
202.662.4858 | cappel@shb.com

From: Appel, Chris (SHB)

Sent: Monday, February 15, 2021 1:15 PM

To: 'HouseJudiciaryCommittee@leg.state.nh.us' <HouseJudiciaryCommittee@leg.state.nh.us>

Subject: Testimony in opposition to HB 368

Dear Committee Members,


Please find attached my written testimony in opposition to HB 368 (medical monitoring bill) on behalf of the American Tort Reform Association.

Kind regards,
Chris Appel

Christopher E. Appel

Of Counsel

Shook, Hardy & Bacon L.L.P.
1800 K Street, NW, Suite 1000
Washington, DC 20006-2202
202.662.4858 | cappel@shb.com


Rep Kurt Wuelper

Bill as
Introduced

HB 368 - AS INTRODUCED

2021 SESSION

21-0142
11/08

HOUSE BILL **368**

AN ACT relative to claims for medical monitoring.

SPONSORS: Rep. Cushing, Rock. 21; Rep. Edgar, Rock. 21; Rep. Chase, Straf. 18; Rep. Rung, Hills. 21; Sen. Sherman, Dist 24

COMMITTEE: Judiciary

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.

21-0142
11/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to claims for medical monitoring.

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

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

CHAPTER 125-T

CLAIMS FOR MEDICAL MONITORING

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

125-T:2 Definitions. In this chapter:

- I. "Exposure" means ingestion, inhalation, contact with skin or eyes, or any other physical contact.
- II. "Hazardous or toxic substance" means any chemical or biological substance that is categorized as toxic, or an equivalent, by the United States Environmental Protection Agency (EPA) or the Agency for Toxic Substance and Disease Registry (ATSDR) of the United States Department of Health and Human Services. Chemical or biological substances which are not so categorized may be proven to be hazardous or toxic by a preponderance of the evidence by expert testimony.

125-T:3 Elements of Claim.

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

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

- (b) The plaintiff now suffers from an increased risk of illness, disease, or latent disease. The plaintiff does not need to prove that the illness, disease, or latent disease is certain or likely to develop as a result of the exposure;
- (c) The increased risk under subparagraph (b) makes the need for diagnostic testing reasonably necessary; and
- (d) Medical tests exist to detect the illness, disease, or latent disease.

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

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

125-T:4 Damages.

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

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

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

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

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

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