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Introduced by Representatives Sullivan of Dorset, Browning of Arlington,  
Bates of Bennington, Brownell of Pownal, Carroll of  
Bennington, Chesnut-Tangerman of Middletown Springs,  
Coffey of Guilford, Gannon of Wilmington, and Morrissey of  
Bennington

Referred to Committee on

Date:

Subject: Judiciary; toxic substances; medical monitoring damages

Statement of purpose of bill as introduced: This bill proposes to establish a  
private right of action for medical monitoring damages incurred due to  
exposure to a toxic substance.

An act relating to medical monitoring damages

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

Sec. 1. 12 V.S.A. chapter 219 is added to read:

CHAPTER 219. MEDICAL MONITORING DAMAGES

§ 7201. DEFINITIONS

As used in this chapter:

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

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

3           (3) “Facility” means all contiguous land, structures, other  
4           appurtenances, and improvements on the land where toxic substances are  
5           manufactured, processed, used, or stored. A facility may consist of several  
6           treatment, storage, or disposal operational units. A facility shall not include  
7           land, structures, other appurtenances, and improvements on the land owned by  
8           a municipality.

9           (4) “Large user of toxic substances” means, at the time of the release,  
10          the owner or operator of a facility that employs 10 or more employees, has a  
11          Standard Industrial Classification (SIC) Code, and manufactures, processes, or  
12          otherwise uses, exclusive of sales or distribution, more than 1,000 pounds of  
13          one or more, or a combination of, toxic substances per year.

14          (5) “Medical monitoring damages” means the anticipated future costs of  
15          providing medically necessary periodic diagnostic testing and performing  
16          related procedures for the purpose of detecting latent disease or acute health  
17          conditions that may result from a person’s exposure to a toxic substance.

18          (6) “Release” means any intentional or unintentional, permitted or  
19          unpermitted, act or omission that allows a toxic substance to enter the air, land,  
20          surface water, or groundwater.

1           (7) “Toxic substance” means any substance, mixture, or compound that  
2           has the capacity to produce personal injury or illness to humans through  
3           ingestion, inhalation, or absorption through any body surface and that satisfies  
4           one or more of the following:

5                   (A) The substance, mixture, or compound is listed on the U.S.  
6           Environmental Protection Agency Consolidated List of Chemicals Subject to  
7           the Emergency Planning and Community Right-To-Know Act, Comprehensive  
8           Environmental Response, Compensation and Liability Act, and Section 112(r)  
9           of the Clean Air Act.

10                   (B) The substance, mixture, or compound is defined as a “hazardous  
11           material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A.  
12           chapter 159.

13                   (C) Testing has produced evidence, recognized by the National  
14           Institute for Occupational Safety and Health or the U.S. Environmental  
15           Protection Agency, that the substance, mixture, or compound poses acute or  
16           chronic health hazards.

17                   (D) The Department of Health has issued a public health advisory for  
18           the substance, mixture, or compound.

19                   (E) The Secretary of Natural Resources has designated the substance,  
20           mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159.

1           (F) The substance, when released, can be shown by competent  
2           medical evidence to pose a threat to persons exposed to the substance of  
3           development of a latent disease or an acute health condition.

4           § 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO  
5           TOXIC SUBSTANCES

6           (a) A person with or without a present injury or disease shall have a cause  
7           of action for medical monitoring damages against a large user of toxic  
8           substances who released a substance, mixture, or compound that meets the  
9           definition of toxic substance under section 7201 of this title and all of the  
10          following are demonstrated by a preponderance of the evidence:

11           (1) The person was exposed to the toxic substance at greater than  
12          normal background concentration levels.

13           (2) The exposure was the result of:

14           (A) negligent or reckless conduct by the large user of toxic  
15          substances who released the toxic substance; or

16           (B) a release of a hazardous material that the large user of toxic  
17          substances is liable for under 10 V.S.A. § 6615.

18           (3) As a proximate result of the exposure, the person has a greater risk  
19          than the general public of contracting a latent disease, without regard to  
20          whether the person can establish that the latent disease is certain or likely to  
21          develop as a result of the exposure.

1           (4) Periodic diagnostic testing is medically necessary. Periodic  
2           diagnostic testing is medically necessary for the purposes of this section if after  
3           considering the level of likely exposure of a person to the toxic substance and  
4           the extent that there exists a material threat of the later development by that  
5           person of a latent disease or chronic health condition as a result thereof, a  
6           prudent physician would consider periodic testing to be scientifically and  
7           medically appropriate for the purpose of detecting the onset of a latent disease  
8           or chronic health condition.

9           (5) Medical tests or procedures exist to detect the latent disease.

10          (b) A court shall direct that any medical monitoring damages awarded be  
11          paid directly into a fund established by the Department of Health for the  
12          purpose of administering a toxic substances periodic diagnostic testing  
13          program. The Department of Health shall, to the extent of the resources made  
14          available through the award and collection of medical monitoring damages,  
15          and pursuant to such guidelines and protocols as the Department of Health may  
16          from time to time establish, administer a periodic testing program by providing  
17          or arranging medically necessary diagnostic testing and related procedures to  
18          persons awarded medical monitoring damages.

19          (c) If a court awards medical monitoring damages under subsection (b) of  
20          this section, the court also shall award to the plaintiff reasonable attorney's  
21          fees and other litigation costs reasonably incurred.

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

6        (e) This section does not preclude a court from certifying a class action for  
7        medical monitoring damages.

8        (f) This section shall not increase the rights and remedies available to an  
9        employee under 21 V.S.A. chapter 9.

10        Sec. 2. WEBSITE; LINKS TO LIST OF TOXIC SUBSTANCES

11        The Commissioner of Health shall maintain on the Department of Health  
12        website a link to each of the lists of substances, mixtures, or compounds  
13        referenced in the definition of “toxic substance” under 12 V.S.A. § 7201.

14        Sec. 3. EFFECTIVE DATE

15        This act shall take effect on July 1, 2019.