

Amendment to HB 661

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

2
3 AN ACT relative to claims for medical monitoring.
4

5 Amend the bill by replacing all after the enacting clause with the following:
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7 1 New Chapter; Claims for Medical Monitoring. Amend RSA by inserting after chapter 125-S
8 the following new chapter:

9 CHAPTER 125-T

10 CLAIMS FOR MEDICAL MONITORING

11 125-T:1 Purpose. The general court finds that a claim for medical monitoring is consistent with
12 currently existing common law in the state of New Hampshire and other jurisdictions. The purpose
13 of this chapter is to make the remedy of medical monitoring damages more uniform and better
14 address the needs of those exposed.

15 125-T:2 Definitions. In this chapter:

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

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

23 125-T:3 Elements of Claim.

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

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

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

31 (c) The increased risk under subparagraph (b) makes the need for diagnostic testing

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1 reasonably necessary; and

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

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

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

6 125-T:4 Damages.

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

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

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

13 125-T:5 Statute of Limitation. Medical monitoring claims shall be made with 3 years of the
14 effective date of this chapter or discovery of exposure. The date when the hazardous or toxic
15 substance was released is immaterial for purposes of this section.

16 125-T:6 Severability. If any provision of this chapter or the application thereof to any person or
17 circumstances is held invalid, such invalidity shall not affect other provisions or applications of the
18 chapter which can be given effect without the invalid provision or application, and to this end the
19 provisions of this chapter are declared to be severable.

20 2 Effective Date. This act shall take effect upon its passage.

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AMENDED ANALYSIS

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