### SB 111 - AS INTRODUCED

#### 2021 SESSION

21-0966 08/05

SENATE BILL 111

AN ACT relative to claims for medical monitoring.

SPONSORS: Sen. Carson, Dist 14

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removed from current law appears [in brackets and struckthrough.]Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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# 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	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 following
6	significant exposure to PFAS is consistent with currently existing common law in the state of New
7	Hampshire and other jurisdictions. The purpose of this chapter is to make the remedy of medical
8	monitoring damages more uniform and better 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. "PFAS" means per and polyfluoroalkyl substances and related compounds .
13	125-T:3 Elements of Claim.
14	I. In order to prove a claim for medical monitoring damages, the plaintiff must show by a
15	preponderance of the evidence for each of the following that:
16	(a) The defendant negligently caused significant exposure to PFAS;
17	(b) The plaintiff provides evidence through an appropriate medical test that shows that
18	the plaintiff suffers from an increased risk of illness, disease, or latent disease based on the latest
19	medical science. The plaintiff does not need to prove that the illness, disease, or latent disease is
20	certain or likely to develop as a result of the exposure;
21	(c) The increased risk under subparagraph (b) makes the need for diagnostic testing
22	reasonably necessary; and
23	(d) Medical tests exist to detect the illness, disease, or latent disease.
24	II. A claim for medical monitoring damages may be made without proof of present physical
25	injury or symptoms.
26	III. Present or past health status shall not be at issue in a claim for medical monitoring.
27	125-T:4 Damages.
28	I. Damages shall be limited to reasonably necessary periodic examinations in accordance
29	with the latest medical science and related costs. The costs and necessity of such examinations shall
30	be proven by expert testimony.
31	II. If medical monitoring relief is awarded, a court may place the award into a court-

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1 supervised program administered by one or more medical professionals.

2 III. Upon an award of medical monitoring damages, the court may award to the plaintiff 3 reasonable attorney's fees and other litigation costs reasonably incurred.

4 125-T:5 Statute of Limitation. Medical monitoring claims shall be made with 3 years of the 5 effective date of this chapter or discovery of exposure. The date when the PFAS was released is 6 immaterial for purposes of this section.

7 125-T:6 Severability. If any provision of this chapter or the application thereof to any person or

8 circumstances is held invalid, such invalidity shall not affect other provisions or applications of the

9 chapter which can be given effect without the invalid provision or application, and to this end the

10 provisions of this chapter are declared to be severable.

11 2 Effective Date. This act shall take effect upon its passage.