

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

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ANALYSIS

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

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## 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.

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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.