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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2794

03/09/2023 Authored by Brand, Norris, Pursell, Fischer, Lee, F., and others
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to civil actions; authorizing a cause of action for the remedy of medical
1.3 monitoring; proposing coding for new law in Minnesota Statutes, chapter 604.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. [604.112] MEDICAL MONITORING FOR EXPOSURE TO PROVEN
1.6 TOXIC SUBSTANCES.

1.7 Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have
1.8 the meanings given.

1.9 (b) "Disease" means any disease, illness, ailment, or adverse physiological or chemical
1.10 change linked to exposure to a proven toxic substance.

1.11 (c) "Establishment" means any premises used for any of the following purposes: trade,
1.12 business, professional, vocational, commercial, charitable, or governmental.

1.13 (d) "Exposure" means ingestion, inhalation, or absorption through any bodily surface.

1.14 (e) "Facility" means all contiguous land, structures, other appurtenances, and
1.15 improvements on the land where proven toxic substances are manufactured, processed,
1.16 used, or stored. A facility may consist of several treatment, storage, or disposal operational
1.17 units. A facility shall not include land, structures, other appurtenances, and improvements
1.18 on the land owned by a municipality.

1.19 (f) "Government entity" has the meaning given in section 13.02, subdivision 7.

2.1 (g) "Large facility" means a facility where an activity within a North American Industrial  
2.2 Classification System (NAICS) code of 21, 22, 31 to 33, 48, or 49 is conducted or was  
2.3 conducted:

2.4 (1) where, at any one time, ten or more full-time or full-time equivalent employees have  
2.5 been employed; or

2.6 (2) that is owned or operated by a person who, when all facilities or establishments that  
2.7 the person owns or controls are aggregated, has employed 500 employees at any one time.

2.8 (h) "Medical monitoring" means a program of medical tests or procedures for the purpose  
2.9 of early detection of signs or symptoms of a latent disease resulting from exposure.

2.10 (i) "Municipality" has the meaning given in section 469.110, subdivision 4.

2.11 (j) "Operator" means a person who manages, conducts, or directs the operations of a  
2.12 facility.

2.13 (k) "Owner" means a person who owns or controls a facility. Owner does not include a  
2.14 person who without participating in the management of the facility holds indicia of ownership  
2.15 primarily to protect a security interest.

2.16 (l) "Person" means any individual, partnership, corporation, association, unincorporated  
2.17 association, joint venture, trust, government entity, federal agency, or any other legal or  
2.18 commercial entity.

2.19 (m) "Proven toxic substance" means:

2.20 (1) any substance, mixture, or compound that may cause personal injury or disease to  
2.21 humans and that satisfies one or more of the following:

2.22 (i) the substance, mixture, or compound is listed on the United States Environmental  
2.23 Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and  
2.24 Community Right-To-Know Act, Comprehensive Environmental Response, Compensation  
2.25 and Liability Act, and the Clean Air Act, United States Code, title, 42, chapter 85, section  
2.26 112(r), as amended;

2.27 (ii) the substance, mixture, or compound is defined as a pollutant or contaminant, as  
2.28 those terms are defined in section 115B.02;

2.29 (iii) testing has produced evidence, recognized by the National Institute for Occupational  
2.30 Safety and Health or the United States Environmental Protection Agency, that the substance,  
2.31 mixture, or compound poses acute or chronic health hazards;

3.1 (iv) the commissioner of health has issued a public health advisory for the substance,  
3.2 mixture, or compound; or

3.3 (v) exposure to the substance, mixture, or compound is shown by expert testimony to  
3.4 increase the risk of developing a latent serious disease;

3.5 (2) and does not include:

3.6 (i) a pesticide when applied consistently in adherence to best practices; in conformity  
3.7 with federal, state, and local laws, rules, and regulations; and according to the manufacturer's  
3.8 instructions; or

3.9 (ii) ammunition or components of ammunition; firearms; air rifles; discharge of firearms  
3.10 or air rifles; hunting equipment or components of hunting equipment; or fishing equipment  
3.11 or components of fishing equipment.

3.12 (n) "Release" means any act or omission that allows a proven toxic substance to enter  
3.13 the air, land, surface water, or groundwater.

3.14 (o) "Serious disease" means a disease that has the potential to cause death, disability, or  
3.15 chronic pain.

3.16 (p) "Tortious conduct" or "tortious" means negligence, trespass, nuisance, product  
3.17 liability, or common law liability for ultrahazardous or abnormally dangerous activity.

3.18 Subd. 2. Cause of action. A person without a present injury or disease shall have a cause  
3.19 of action for the remedy of medical monitoring against a person who is the owner or operator  
3.20 of a large facility from which a proven toxic substance was released if all of the following  
3.21 are demonstrated by a preponderance of the evidence:

3.22 (1) exposure:

3.23 (i) at a rate significantly greater than the general population;

3.24 (ii) to a proven toxic substance;

3.25 (iii) as a result of tortious conduct of the defendant;

3.26 (2) as a proximate result of the exposure, the plaintiff has an increased risk of contracting  
3.27 a serious disease;

3.28 (3) the increased risk of contracting a serious disease makes it medically necessary for  
3.29 the plaintiff to undergo periodic medical examination different from that prescribed for the  
3.30 general population in the absence of exposure; and

3.31 (4) monitoring procedures exist that are reasonable in cost and safe for use.

4.1 Subd. 3. **Award.** If the cost of medical monitoring is awarded, a court shall order the  
4.2 defendant found liable to pay the award to a court-supervised medical monitoring program  
4.3 administered by one or more appropriate health professionals, including professionals with  
4.4 expertise in exposure to toxic substances or expertise with treating or monitoring the relevant  
4.5 latent disease or diseases. The court shall award reasonable attorney fees, costs, and  
4.6 disbursements to a prevailing plaintiff under this section.

4.7 Subd. 4. **Exclusivity; other remedies.** (a) This section shall be the exclusive remedy  
4.8 for a person without a present injury to bring a cause of action to seek medical monitoring  
4.9 due to exposure to a proven toxic substance.

4.10 (b) Except as provided under paragraph (a), nothing in this section shall be deemed to  
4.11 preclude any other civil or injunctive remedy or defense available under statute or common  
4.12 law, including the right of any person to seek to recover for damages related to the  
4.13 manifestation of a latent disease. The remedies and defenses in this chapter are in addition  
4.14 to those provided by existing statutory or common law.

4.15 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to causes  
4.16 of action accruing on or after that date.