
This summary is of a bill that was vetoed by the Governor and is awaiting reconsideration by the General Assembly. This summary is provided for the convenience of the public and members of the General Assembly. It is intended to provide a general summary and may not be exhaustive. It has been prepared by the staff of the Office of Legislative Council without input from members of the General Assembly. It is not intended to aid in the interpretation of legislation or to serve as a source of legislative intent.

S.37 (Vetoed). Conservation and land development; judiciary; toxic substances; hazardous materials; liability

This bill would have authorized a cause of action by a person without a present injury for medical monitoring against the owner or operator of a large facility from which a toxic substance was released. All of the following would have been required to be demonstrated by a preponderance of the evidence for a court to award medical monitoring: the person was exposed to a toxic substance as a result of tortious conduct by the owner or operator who released the toxic substance; as a proximate result of the tortious exposure, the person exposed has a greater risk of contracting a latent disease; diagnostic testing is reasonably necessary; and medical tests or procedures exist to detect the latent disease.

The bill would have required an award of attorney's fees if medical monitoring was awarded. The ability to pursue a cause of action for medical monitoring would not have precluded the pursuit of any other civil or injunctive remedy available under statute or common law. The bill would have exempted municipal facilities, lawfully applied pesticides, and lead ammunition discharged, used, or stored by a sport shooting range implementing a lead management plan.

The bill would have added persons who manufactured a hazardous material for commercial sale to the list of persons who are strictly liable for the costs of responding to or remediating a release of a hazardous material. A manufacturer would not have been strictly liable for a hazardous materials release if they provided an adequate warning of the harm posed by the hazardous material when the harm was known or should have been known at the time the material was manufactured. A manufacturer of a hazardous material found strictly liable for a release would have been prohibited from impleading other potentially liable parties for the purposes of contribution. The liability of a manufacturer of a hazardous material would have applied retroactively.

Vetoed by the Governor: June 17, 2019

Effective Date: Not applicable