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Act No. 93 (S.113). Judiciary; cause of action; toxic substances; medical monitoring; manufacturer liability

An act relating to establishing a cause of action for medical monitoring expenses

This act authorizes 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 is released. All of the following are 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 large facility 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 act requires an award of attorney's fees if medical monitoring is awarded. The ability to pursue a cause of action for medical monitoring does not preclude the pursuit of any other civil or injunctive remedy available under statute or common law. The act exempts from the cause of action municipal facilities; lawfully applied pesticides; and lead ammunition discharged, used, or stored by a sport shooting range implementing a lead management plan.

The act adds 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 be strictly liable for a hazardous materials release if the manufacturer 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 is prohibited from impleading other potentially liable parties for the purposes of contribution. The liability of a manufacturer of a hazardous material applies retroactively.

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