

Testimony on S.113
Senate Committee on Judiciary
Chris Carrigan, Vice President
January 27, 2022

Chair Sears and Committee Members,

To begin, and, for a brief overview, Vermont is home to **2,100** manufacturers. Vermont's manufacturing industry generates **\$2.81 billion** in total economic output, representing **9.23%** of the State's gross domestic product and employing **34,162** Vermonters with an average annual salary of **\$59,390**. Many of our manufacturers operate in compliance with existing state and federal laws and are responsible, environmental leaders providing Vermonters with employment and a high standard of living. Over the past twenty-two months, Vermont manufacturers have weathered the pandemic but now face soaring inflation, energy costs, supply chain disruptions and bottlenecks, and severe worker shortages.

Regarding S.113, a bill that proposes a cause of action for the remedy of medical monitoring, the Vermont Chamber supports the recommendations provided in prior testimony on S.37 that have been included in this new bill. These include updated definitions of:

- Disease;
- Proven toxic substance;
- Exposure to the substance;
- Release; and
- Tortious conduct.

Regarding medical monitoring claims, the updated legal test, including criteria for claimants to have a cause of action and seek a remedy under **§ 7202 Medical Monitoring for Exposure to Proven Toxic Substances**, and, with a few differences, appears to align with the legal test articulated in the ruling by the U.S. District Court Judge Geoffrey Crawford.

Recommendation:

One difference, however, is that S.113 uses a slightly different legal test for cause than in the Crawford decision. If the updated legal test in S.113 mirrored the Crawford test it would provide greater certainty for our manufacturers and an otherwise already disrupted supply chain during the pandemic. As such, the Vermont Chamber recommends the Committee change:

- **“As a result of the exposure**, plaintiffs have suffered an increased risk of contracting a serious disease;” to:

- “As a proximate result of the exposure, plaintiffs have suffered an increased risk of contracting a serious disease.”

Insurance:

Additionally, the Vermont Chamber has concerns regarding the insurance market and encourages the Committee to hear from the Vermont Department of Financial Regulation on whether medical monitoring insurance can be written for Vermont companies, especially for small and medium-sized enterprises (SMEs) and manufacturers.

If not, three scenarios could disrupt the insurance markets, further impact our supply chains and economy during a pandemic, and subject manufacturers to significant risks and costs under S.113 as currently written. Manufacturers, for example, may:

1. Not be covered under their existing insurance policies for medical monitoring claims brought under S.113;
2. Not be able to obtain insurance for medical monitoring claims because insurance companies will exclude it from their policies; and
3. Need to secure special insurance from secondary markets not regulated by Vermont at extremely high costs.

And, added costs, along with the aforementioned pandemic pressures, will place our manufacturers at a competitive disadvantage.

In closing, the statewide Vermont Chamber of Commerce is glad to see that our previous recommendations were incorporated, supports alignment with other states and court decisions for reasonable and balanced standards and criteria, recommends mirroring the updated legal test in S.113 with the Crawford test, and, **importantly**, recommends clarification for the insurance markets and our manufacturers.