STATE OF NEW YORK

298

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the civil practice law and rules, in relation to establishing a cause of action for medical monitoring

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The environmental conservation law is amended by adding a new section 37-0116 to read as follows:

§ 37-0116. Cause of action for medical monitoring.

1. For the purpose of this section, the following terms shall have the following meanings:

(a) "exposure" shall have the same meaning set forth in section two hundred fourteen-c of the civil practice law and rules.

(b) "toxic substance" shall mean:

(i) any chemical or biological substance that poses a risk to human health as defined by the commissioner pursuant to section 37-0103 of this title;

(ii) any substance categorized as toxic or hazardous by the United States environmental protection agency or the United States agency for toxic substance and disease registry shall be a hazardous or toxic substance; and

(iii) any substance not so characterized may be proven to be toxic by a preponderance of the evidence.

(c) "release" shall mean any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(d) "medical monitoring" shall mean a program of medical surveillance, including medical tests or procedures for the purpose of early detection of signs or symptoms of latent disease resulting from exposure.

(e) "latent disease" shall mean any condition that negatively affects human health by causing death or permanent or protracted loss of mental or physical function which a person has a significantly increased risk of contracting.

(f) "reasonably necessary" shall mean the standard whereby a physician would prescribe testing for the purpose of detecting or monitoring the latent disease.

(g) "person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, federal government, state, municipality, commission, political subdivision, or any interstate body.

2. A person with or without a present injury or disease shall have a cause of action for medical monitoring damages against a person who released a toxic substance if all of the following are demonstrated by a preponderance of the evidence:

(a) the person may have been exposed to the toxic substance as a result of the unauthorized release by the person who released the toxic substance;

(b) there is a probable link between exposure to the toxic substance and a latent disease;

(c) the person's exposure to the toxic substance increases the risk of developing the latent disease, provided that such person shall not be required to prove that the latent disease is certain or likely to develop as a result of the exposure;

(d) diagnostic testing is reasonably necessary; and

(e) medical tests or procedures exist to detect the latent disease.

3. Nothing in this section shall be construed to preclude the pursuit of any other civil or injunctive remedy available under statute or common law, including the right of any person to recover for damages related to the manifestation of a latent disease. The remedies in this section are in addition to those provided by existing statutory or common law.

4. This section does not preclude a court from certifying a class action for medical monitoring damages.

§ 2. The civil practice law and rules is amended by adding a new section 214-i to read as follows:

§ 214-i. Cause of action for medical monitoring. Notwithstanding any provision of law to the contrary, a cause of action for medical monitoring pursuant to section 37-0116 of the environmental conservation law, may be commenced by the plaintiff within the period allowed pursuant to section two hundred fourteen-c of this article or within one year of the effective date of this section.

§ 3. This act shall take effect immediately.