WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 236

BY SENATORS TRUMP AND WELD

[Originating in the Committee on the Judiciary;

reported on February 22, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

2 designated §55-7-31, relating to claims or damages for medical monitoring; providing for

3 certain elements for a claim for medical monitoring damages in addition to the underlying

4 cause of action; requiring future medical surveillance, screening tests or monitoring

5 procedures are directly related to a presently existing and diagnosable physical disease

6 or injury of a plaintiff; requiring that a plaintiff's presently existing physical disease or injury

7 was caused by the defendant's conduct; and providing that an increased risk of disease

8 is not a compensable basis for damages in any civil action.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

2 section, designated §55-7-31, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-31. Limitations on medical monitoring damages.

1 Increased risk of disease, whether or not accompanied by physiological or other changes

2 in the human body, is not compensable through damages or any other form of relief under the

3 law of this state, regardless of the legal theory being asserted. In any civil action a defendant

4 cannot be required to pay as damages or provide any other type of legal, injunctive or equitable

5 relief for a plaintiff's future medical surveillance, screening tests or monitoring procedures unless

6 the plaintiff proves in addition to the other requirements for the underlying cause of action: (1)

7 That such future medical surveillance, screening tests or monitoring procedures are directly

8 related to a presently existing and diagnosable physical disease or injury of the plaintiff; and (2)

9 that the plaintiff's presently existing physical disease or injury was caused by the defendant's

10 conduct.