

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2580**

BY DELEGATES HIGGINBOTHAM, COOPER, ANDERSON,  
DEEM, MOORE AND OVERINGTON)

[Introduced February 21, 2017; referred  
to the Committee on the Judiciary.]

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 damages for medical monitoring; establishing  
 3 requirements for an order for payment of medical monitoring expenses; and providing that  
 4 an increased risk of disease 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 (a) Increased risk of disease, whether or not accompanied by physiological or other  
 2 changes in the human body, is not compensable through damages or any other form of relief  
 3 under the law of this state, regardless of the legal theory being asserted. In any civil action a  
 4 defendant cannot be required to pay as damages or provide any other type of legal, injunctive or  
 5 equitable relief for a plaintiff’s future medical surveillance, screening tests, or monitoring  
 6 procedures unless the plaintiff proves in addition to the other requirements for the underlying  
 7 cause of action: (1) That such future medical surveillance, screening tests, or monitoring  
 8 procedures are directly related to a presently existing and diagnosable physical disease of the  
 9 plaintiff; and (2) that the plaintiff’s presently existing physical disease was caused by the  
 10 defendant’s conduct.

11 (b) In any civil action in which a court orders a defendant to pay for a plaintiff’s future  
 12 medical surveillance, screening tests, or monitoring procedures, no plaintiff shall be awarded or  
 13 paid any moneys to cover the cost of his or her future medical surveillance, screening tests, or  
 14 monitoring procedures until they have been completed. The court shall order that the liable  
 15 defendant make periodic payments into a fund established to pay the cost of future medical  
 16 surveillance, screening tests, or monitoring procedures that are required by the judgment of the  
 17 court. The court shall determine how such fund will be administered. The court shall also

18 determine the date after which such future medical surveillance, screening tests, or monitoring  
19 procedures are no longer required, and after that date any moneys remaining in the fund that are  
20 not needed to pay for medical surveillance, screening tests, or monitoring procedures completed  
21 prior to such termination date shall be repaid to the liable defendant who paid such amounts into  
22 the fund. If there are multiple such defendants, then repayments shall be made in proportion to  
23 the total contributions of each defendant into the fund.

NOTE: The purpose of this bill is to establish limits applicable to the award of damages for medical monitoring.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.