

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

## **Senate Bill 225**

BY SENATORS TRUMP AND TAKUBO

[Introduced January 12, 2022; 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 §55-7-32, relating to actions for injuries; damages for medical monitoring;  
3 establishing requirements for an order for payment of medical monitoring expenses;  
4 providing that an increased risk of disease is not a compensable basis for damages in any  
5 civil action; providing that, where awarded, payment of medical monitoring expenses shall  
6 not be paid to a prevailing plaintiff until the procedure is completed; requiring that, where  
7 awarded, defendants pay medical monitoring expenses into a fund established by the  
8 court for that purpose; and providing for the return of any money remaining in the fund  
9 after medical monitoring is no longer required to the defendants.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 7. ACTIONS FOR INJURIES.**

### **§55-7-32. 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 or injury  
9 of the plaintiff; and (2) that the plaintiff's presently existing physical disease or injury was caused  
10 by the 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, a plaintiff may not be awarded  
13 or 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 the fund will be administered. The court shall also determine  
18 the date after which future medical surveillance, screening tests, or monitoring procedures are no  
19 longer required, and after that date any moneys remaining in the fund that are not needed to pay  
20 for medical surveillance, screening tests, or monitoring procedures completed prior to the  
21 termination date shall be repaid to the liable defendant who paid such amounts into the fund. If  
22 there are multiple defendants, then repayments shall be made in proportion to the total  
23 contributions of each defendant into the fund.

NOTE: The purpose of this bill is to limit medical monitoring damages and establish requirements for an order for payment of medical monitoring expenses.

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