

1 **Senate Bill No. 400**

2 (By Senators Boley, Hall, K. Facemyer, Nohe, Sypolt and Barnes)

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5 [Introduced February 3, 2011; referred to the Committee on the  
6 Judiciary; and then to the Committee on Finance.]  
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §55-7-9a, relating to  
12 damages for acts causing physical injury; and prohibiting  
13 medical monitoring relief absent manifest present injury or  
14 disease.

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

16 That the Code of West Virginia, 1931, as amended, be amended  
17 by adding thereto a new section, designated §55-7-9a, to read as  
18 follows:

19 **ARTICLE 7. ACTIONS FOR INJURIES.**

20 **§55-7-9a. Claims for Medical Monitoring.**

21 (a) Notwithstanding the decision of the Supreme Court in the  
22 case of *Bower v. Westinghouse*, 522 S.E.2d 424 (W. Va. 1999), in any  
23 civil action in which an individual seeks relief of any kind  
24 including damages and equitable relief for the wrongful or tortious

1 acts of any person, such relief may not include future medical  
2 monitoring, testing, treatment, services, surveillance, or  
3 procedures of any kind, including the costs and expenses associated  
4 therewith, unless such future medical monitoring, testing,  
5 examination, treatment, services, surveillance or procedures are  
6 directly related to a present manifest physical injury or disease  
7 which was caused by or directly related to such tortious or  
8 wrongful acts and which was found to have caused present physical  
9 impairment.

10 (b) Nothing in this section creates, recognizes, or ratifies  
11 a claim or cause of action of any kind.

12 (c) It is the intent of the Legislature that this legislation  
13 overrules the decision of the Supreme Court of Appeals of West  
14 Virginia in the case of *Bower v. Westinghouse*, 522 S.E.2d 424 (W.  
15 Va. 1999). This section applies to any claim or cause of action  
16 pending on the effective day of this section.

17 (d) For purposes of this section "person" means any  
18 individual, partnership, firm, society, association, trust,  
19 corporation, other business entity, or any agency, unit, or  
20 instrumentality of federal, state or local government.

21 (e) If any portion of this section or any application of this  
22 section is subsequently found to be unconstitutional or in  
23 violation of applicable law, it does not affect the validity of the  
24 remainder of this section or such applications of the section as

1 are not unconstitutional or in such violation.

NOTE: The purpose of this bill is to require that damages for the costs of future medical treatment and testing be directly related to a current manifest physical injury or disease.

This section is new; therefore, strike-throughs and underscoring have been omitted.