

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2670

FISCAL
NOTE

BY DELEGATES HIGGINBOTHAM, WAXMAN, KESSINGER

AND WESTFALL

[Introduced January 25, 2019; 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 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:

ARTICLE 7. ACTIONS FOR INURIES.

§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 the 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 the fund will be administered. The court shall also determine
18 the date after which the future medical surveillance, screening tests, or monitoring procedures
19 are no longer required, and after that date any moneys remaining in the fund that are not needed

20 to pay 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 in 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 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.