

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 569**

BY SENATOR AZINGER

[Originating in the Committee on the Judiciary;

reported on March 17, 2021]



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; providing that an  
4 increased risk of disease is not a compensable basis for damages in any civil action;  
5 providing that, where awarded, payment of medical monitoring expenses shall not be paid  
6 to a prevailing plaintiff until the procedure is completed; requiring that, where awarded,  
7 defendants pay medical monitoring expenses into a fund established by the court for that  
8 purpose; and providing for the return of any money remaining in the fund after medical  
9 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 shall 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 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 defendants, then repayments shall be made in proportion to the total  
23 contributions of each defendant into the fund.