

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3193**

By Delegates Mallow, DeVault, Adkins, Marple,

Forsht, and Miller

[Introduced January 31, 2023; 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; providing that increased  
 3 risk of disease is not a compensable basis for damages or other relief in any civil action;  
 4 and establishing requirements for an order for payment of medical monitoring expenses.

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

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-32. Limitations on medical monitoring damages.**

1 Increased risk of disease, whether or not accompanied by physiological or other changes  
 2 in the human body, is not compensable through damages or any other form of relief under the law  
 3 of this state, regardless of the legal theory being asserted. In any civil action a defendant cannot  
 4 be required to pay as damages or provide any other type of legal, injunctive, or equitable relief for a  
 5 plaintiff's future medical surveillance, screening tests, or monitoring procedures unless the plaintiff  
 6 proves the following in addition to the other requirements for the underlying cause of action:

7 (1) That such future medical surveillance, screening tests, or monitoring procedures are  
 8 directly related to a presently existing and diagnosable physical disease or injury of the plaintiff;  
 9 and

10 (2) That the plaintiff's presently existing physical disease or injury was caused by the  
 11 defendant's conduct.

NOTE: The purpose of this bill is to provide for damages for medical monitoring. The bill establishes requirements for an order for payment of medical monitoring expenses. The bill provides that an increased risk of disease is not a compensable basis for damages in any civil action. The bill provides that, where awarded, payment of medical monitoring expenses shall not be paid to a prevailing plaintiff until the procedure is completed. The bill requires that, where awarded, defendants pay medical monitoring expenses into a fund established by the court for that purpose. Finally, the bill provides for the return of any money remaining in the fund after medical monitoring is no longer required to the defendants.

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