

1 **Senate Bill No. 505**

2 (By Senators Wills, Snyder, Tucker, Yost, D. Facemire and Kessler

3 (Mr. President))

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5 [Introduced February 2, 2012; referred to the Committee on
6 Banking and Insurance; and then to the Committee on the
7 Judiciary.]

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12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §33-11-11, relating
14 to unfair trading practices by insurance companies; providing
15 a third-party claimant may collect damages from an insurance
16 company that has intentionally engaged in an unfair trade
17 practice; and setting forth the requirements that must be met
18 before damages may be awarded.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new section, designated §33-11-11, to read as
22 follows:

23 **ARTICLE 11. UNFAIR TRADE PRACTICES.**

1 **§33-11-11. Willful or intentional violations; cause of action;**
2 **elements; damages; procedure.**

3 Notwithstanding any provision of this chapter to the contrary,
4 a third-party claimant who sustains damages as a consequence of the
5 willful or intentional violation of this article, may bring an
6 action against the person or entity committing the willful or
7 intentional violation and may recover all damages and pursue all
8 legal and equitable remedies available under the law. The
9 individual or entity shall bring the action in a court of competent
10 jurisdiction and shall be required, in order to recover any of the
11 damages and remedies provided by this section, to establish by
12 competent proof by clear and convincing evidence: (1) That the
13 violation did in fact occur; (2) the violation was willful or
14 intentional; and (3) that damages resulted from the violation.

NOTE: The purpose of this bill is to permit a third-party claimant to collect damages from an insurance company that has intentionally engaged in an unfair trade practice. The bill sets forth the requirements that must be met in order that damages may be awarded.

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