WEST VIRGINIA CODE: §33-44-8

§33-44-8. Civil relief.

(a) No insurance contract entered into in violation of this article shall preclude the insured from enforcing his or her rights under the contract in accordance with the terms and provisions of the contract and the laws of this state against any unauthorized insurer or any person assisting the unauthorized insurer to the same degree those rights would have been enforceable had the contract been lawfully procured.

(b) No insurance contract entered into in violation of this article shall preclude a provider of health care services from enforcing the rights of the insured under the contract in accordance with the terms and provisions of the contract and the laws of this state against any unauthorized insurer or any person assisting the unauthorized insurer pursuant to an assignment of rights executed between the insured and the health care provider.

(c) In an action against an unauthorized insurer upon a contract of insurance issued or delivered to a resident of this state or to a corporation authorized to do business in this state, if the trier of fact finds by a preponderance of the evidence that the unauthorized insurer has failed to make payment in accordance with the terms of the contract, the trier of fact shall award to the insured or the health care provider:

(1) Contract damages in accordance with the terms and provisions of the contract and the laws of this state to the same degree those rights would have been enforceable had the contract been lawfully procured;

(2) Simple interest at a rate of prime plus one percent on the total amount awarded as restitution, accruing from the date payment was due;

(3) If in addition to a finding that the unauthorized insurer has failed to make payment in accordance with the terms of the contract, the trier of fact finds by a preponderance of the evidence that failure to make payment was without reasonable cause, the trier of fact shall award the plaintiff a reasonable attorney fee and include the fee in any judgment that may be rendered in the action. The fee shall not exceed thirty-three percent of the amount that the trier of fact finds the plaintiff is entitled to recover against the unauthorized insurer;

(4) If in addition to a finding that the unauthorized insurer has failed to make payment in accordance with the terms of the contract, the trier of fact further finds that failure to make payment was willful, wanton and malicious, the trier of fact may award the plaintiff punitive damages in an amount that the trier of fact finds the plaintiff is entitled to recover against the insurer.

WV Legislature