
By: Delegate Fulton

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Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 1997

CHAPTER ____

1 AN ACT concerning

2 **Insurers - Insolvency - Priority of Claims**

3 FOR the purpose of establishing, by class, the priority of claims against an estate of an
4 insolvent insurer; requiring the liquidator to pay each claim in each class in full or
5 to retain adequate funds before paying any claims of members of the next class;
6 providing that an estate of an insolvent insurer is not liable to the members of a
7 class when adequate funds have been retained under certain circumstances;
8 prohibiting the establishment of subclasses within any class; prohibiting the use of
9 equitable remedies to circumvent the order of priority within this Act; repealing ~~the~~
10 certain existing codified provisions regarding the priority of claims against an estate
11 of an insolvent insurer; and generally relating to the priority of claims against the
12 estate of an insolvent insurer.

13 BY repealing and reenacting, with amendments,

14 Article - Insurance

15 Section 9-227

16 Annotated Code of Maryland

17 (1995 Volume and 1996 Supplement)

18 (As enacted by Chapter 11 of the Acts of the General Assembly of 1996)

19 BY adding to

20 Article - Insurance

21 Section ~~9-227~~ 9-227.1

22 Annotated Code of Maryland

23 (1995 Volume and 1996 Supplement)

24 (As enacted by Chapter 11 of the Acts of the General Assembly of 1996)

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1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Insurance**

4 §9-227.

5 (a) In this section, "preferred claim" means a claim that is given priority of
6 payment from the general assets of an insurer under the law of the State or the United
7 States.

8 (b) (1) The first \$500 of compensation or wages owed to an officer or employee
9 of an insurer for services rendered within 3 months before the commencement of a
10 delinquency proceeding against the insurer shall be paid before payment of any other
11 debt or claim.

12 (2) Subject to paragraph (3) of this subsection, the Commissioner may pay
13 the compensation required to be paid under this subsection as soon as practicable after
14 commencement of the delinquency proceeding.

15 (3) At all times, the Commissioner shall reserve funds that the
16 Commissioner believes are sufficient for expenses of administration.

17 (4) The priority required under this subsection is instead of any other
18 similar priority that may be authorized by law as to wages or compensation.

19 (c) Priority over all other claims in a liquidation proceeding, other than claims for
20 wages specified in subsection (b) of this section, expenses of administration, and taxes,
21 shall be given to:

22 (1) claims by policyholders, beneficiaries, or insureds, that arise from and
23 within the coverage of and are not in excess of the applicable limits of policies and
24 insurance contracts issued by the insurer;

25 (2) liability claims against insureds that are within the coverage of and are
26 not in excess of the applicable limits of policies and insurance contracts issued by the
27 insurer; and

28 (3) claims of:

29 (i) the Property and Casualty Insurance Guaranty Corporation;

30 (ii) the Life and Health Insurance Guaranty Corporation; and

31 (iii) any similar organization in another state.

32 (d) (1) The owners of special deposit claims against an insurer for which a
33 receiver is appointed in this State or another state have priority against their special
34 deposits as provided by the law that governs the creation and maintenance of special
35 deposits.

36 (2) If there is a deficiency in a special deposit so that the claims secured by
37 the special deposit are not fully discharged, the claimants may share in the general assets
38 after general creditors, and claimants against other special deposits who have received

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1 smaller percentages from their respective special deposits, have been paid percentages of
2 their claims equal to the percentage paid from the special deposit.]

3 ~~(B)~~ (1) The owner of a secured claim against an insurer for which a
4 receiver has been appointed in this State or another state may:

5 (i) surrender the security and file the claim as a general creditor; or

6 (ii) have the claim discharged by resort to the security.

7 (2) If the owner of a secured claim has the claim discharged by resort to the
8 security, any deficiency shall be treated as a claim against the general assets of the insurer
9 on the same basis as the claims of unsecured creditors.

10 (3) The amount of a deficiency is conclusive if adjudicated:

11 (i) in an ancillary proceeding under this subtitle; or

12 (ii) by a court of competent jurisdiction in a proceeding in which the
13 domiciliary receiver has had notice and an opportunity to be heard.

14 (4) If the amount of a deficiency is not conclusive, the amount shall be
15 determined in a delinquency proceeding in the domiciliary state.

16 ~~(C)~~ (1) Current financing moneys that, in accordance with regulations
17 adopted by the Health Services Cost Review Commission, are provided by an insurer,
18 nonprofit health service plan, or health maintenance organization to a hospital for
19 discounted hospital rates are deemed to be security for the amount of outstanding
20 charges owed by the insurer, nonprofit health service plan, or health maintenance
21 organization to the hospital for bills or claims for services provided by the hospital before
22 the delinquency proceeding.

23 (2) A hospital that retains any current financing moneys as security under
24 this subsection:

25 (i) is deemed to be the owner of a secured claim against the insurer,
26 nonprofit health service plan, or health maintenance organization for which a receiver has
27 been appointed; and

28 (ii) may discharge its claim against the insurer, nonprofit health
29 service plan, or health maintenance organization as provided under subsection ~~(B)~~ of
30 this section.

31 ~~(D)~~ (1) In a delinquency proceeding against an insurer domiciled in the
32 State, claims owing to residents of ancillary states are preferred claims if similar claims
33 are preferred under the law of this State.

34 (2) All claims owing to residents of ancillary states or nonresidents have
35 equal priority of payment from general assets regardless of where the general assets are
36 located.

37 ~~(E)~~ (1) In a delinquency proceeding against an insurer domiciled in a reciprocal
38 state, claims owing to residents of this State are preferred claims if similar claims are
39 preferred under the law of that state. }

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1 ~~9-227. 9-227.1.~~

2 (A) THE PRIORITY OF DISTRIBUTION OF CLAIMS FROM AN INSURER'S ESTATE
3 SHALL BE IN THE ORDER IN WHICH EACH CLASS OF CLAIMS IS PROVIDED IN THIS
4 SECTION.

5 (B) (1) A LIQUIDATOR SHALL PAY EVERY CLAIM IN EACH CLASS IN FULL
6 OR RETAIN ADEQUATE FUNDS FOR EACH CLAIM BEFORE DISBURSING ANY
7 PAYMENTS TO THE MEMBERS OF THE NEXT CLASS.

8 (2) IF FUNDS ARE RETAINED BY THE LIQUIDATOR AND APPROVED BY
9 THE CIRCUIT COURT, THE INSURER'S ESTATE SHALL HAVE NO FURTHER LIABILITY
10 TO THE MEMBERS OF THAT CLASS EXCEPT TO THE EXTENT OF THE RETAINED
11 FUNDS AND ANY OTHER UNDISTRIBUTED FUNDS.

12 (C) NO SUBCLASSES MAY BE ESTABLISHED WITHIN ANY CLASS.

13 (D) NO CLAIM BY A SHAREHOLDER, POLICY HOLDER, OR OTHER CREDITOR
14 MAY CIRCUMVENT THE PRIORITY CLASSES THROUGH THE USE OF EQUITABLE
15 REMEDIES.

16 (E) THE PRIORITY OF DISTRIBUTION OF CLAIMS FROM AN INSURER'S ESTATE
17 SHALL BE AS FOLLOWS:

18 ~~(A)~~ (I) CLASS 1 SHALL CONSIST OF THE COSTS AND EXPENSES OF
19 ADMINISTRATION EXPRESSLY APPROVED BY THE RECEIVER, INCLUDING:

20 ~~(1)~~ 1. THE ACTUAL AND NECESSARY COSTS OF PRESERVING OR
21 RECOVERING THE ASSETS OF THE INSURER;

22 ~~(2)~~ 2. COMPENSATION FOR ALL AUTHORIZED SERVICES
23 RENDERED IN THE CONSERVATION, REHABILITATION, OR LIQUIDATION;

24 ~~(3)~~ 3. ANY NECESSARY FILING FEES;

25 ~~(4)~~ 4. ANY FEES AND MILEAGE PAYABLE TO WITNESSES; AND

26 ~~(5)~~ 5. ANY AUTHORIZED REASONABLE ATTORNEYS' FEES AND
27 FEES FOR OTHER PROFESSIONAL SERVICES RENDERED IN THE CONSERVATION,
28 REHABILITATION, OR LIQUIDATION.

29 ~~(2) (I) CLASS 2 SHALL CONSIST OF THE:~~

30 (II) CLASS 1 SHALL INCLUDE:

31 1. REASONABLE EXPENSES INCURRED BY GUARANTY
32 ASSOCIATIONS, WHERE THE EXPENSES ARE NOT PAYMENTS OR EXPENSES WHICH
33 ARE REQUIRED TO BE INCURRED AS DIRECT POLICY BENEFITS IN FULFILLMENT OF
34 AN INSURANCE CONTRACT OR POLICY; AND

35 2. EXPENSES THAT, BUT FOR THE ACTIVITIES OF THE
36 GUARANTY ASSOCIATION, WOULD HAVE BEEN INCURRED BY THE RECEIVER,
37 INCLUDING:

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1 A. EVALUATIONS OF POLICY COVERAGE;

2 B. ACTIVITIES INVOLVED IN THE ADJUSTMENT AND
3 SETTLEMENT OF CLAIMS UNDER POLICIES, INCLUDING THOSE OF IN-HOUSE OR
4 OUTSIDE ADJUSTERS; AND

5 C. REASONABLE EXPENSES INCURRED IN CONNECTION
6 WITH THE ARRANGEMENTS FOR ONGOING COVERAGE THROUGH A TRANSFER TO
7 OTHER INSURERS, POLICY EXCHANGES, OR MAINTAINING POLICIES IN FORCE.

8 ~~(H)~~ (III) THE RECEIVER MAY APPROVE AS AN ADMINISTRATIVE
9 EXPENSE UNDER THIS SECTION ANY OTHER REASONABLE EXPENSES OF THE
10 GUARANTY ASSOCIATION IF THE RECEIVER FINDS THAT:

11 1. THE EXPENSES ARE NOT REQUIRED TO BE PAID OR
12 INCURRED AS DIRECT POLICY BENEFITS OF THE POLICY; AND

13 2. THE EXPENSES WERE INCURRED IN FURTHERANCE OF
14 ACTIVITIES THAT PROVIDED A MATERIAL ECONOMIC BENEFIT TO THE ESTATE AS A
15 WHOLE, REGARDLESS OF WHETHER THE ACTIVITIES RESULTED IN ADDITIONAL
16 BENEFITS TO COVERED CLAIMANTS.

17 ~~(H)~~ (IV) A COURT SHALL APPROVE THE EXPENSES UNDER
18 SUBPARAGRAPH ~~(H)~~ (III) OF THIS PARAGRAPH UNLESS THE COURT FINDS THAT THE
19 RECEIVER ABUSED HIS OR HER DISCRETION IN APPROVING THE EXPENSES.

20 ~~(IV) 1. IF THE RECEIVER DETERMINES THAT THE ASSETS OF THE~~
21 ~~ESTATE WILL BE SUFFICIENT TO PAY ALL CLASS 1 CLAIMS IN FULL, CLASS 2 CLAIMS~~
22 ~~SHALL BE PAID CONCURRENTLY, PROVIDED THAT THE LIQUIDATOR SECURES~~
23 ~~FROM EACH OF THE ASSOCIATIONS RECEIVING DISBURSEMENTS UNDER THIS~~
24 ~~SECTION AN AGREEMENT TO RETURN TO THE LIQUIDATOR ANY DISBURSEMENTS,~~
25 ~~TOGETHER WITH INVESTMENT INCOME ACTUALLY EARNED ON THE~~
26 ~~DISBURSEMENTS, IF REQUIRED TO PAY ANY CLASS 1 CLAIMS.~~

27 ~~2. AN ASSOCIATION RECEIVING DISBURSEMENTS UNDER~~
28 ~~ITEM 1 OF THIS SUBPARAGRAPH MAY NOT BE REQUIRED TO POST BOND.~~

29 ~~(3) (I) CLASS 3~~

30 (2) (I) CLASS 2 SHALL CONSIST OF ALL CLAIMS UNDER POLICIES,
31 INCLUDING:

32 1. CLAIMS OF THE FEDERAL OR ANY STATE OR LOCAL
33 GOVERNMENT FOR LOSSES INCURRED, INCLUDING:

34 A. THIRD PARTY CLAIMS;

35 B. CLAIMS FOR UNEARNED PREMIUMS; AND

36 C. CLAIMS OF A GUARANTY ASSOCIATION, FOR PAYMENT
37 OF COVERED CLAIMS OR COVERED OBLIGATIONS OF THE INSURER;

38 2. CLAIMS OF A GUARANTY ASSOCIATION FOR
39 REASONABLE EXPENSES OTHER THAN THOSE INCLUDED IN CLASS 2 1; AND

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1 3. CLAIMS UNDER LIFE AND HEALTH INSURANCE AND
2 ANNUITY POLICIES, INCLUDING CLAIMS FOR DEATH PROCEEDS, HEALTH BENEFITS,
3 ANNUITY PROCEEDS, OR INVESTMENT VALUES.

4 (II) THE FOLLOWING CLAIMS SHALL BE EXCLUDED FROM ~~CLASS 3~~
5 CLASS 2 PRIORITY:

6 1. ANY PORTION OF ANY LOSS FOR WHICH
7 INDEMNIFICATION IS PROVIDED BY OTHER BENEFITS OR ADVANTAGES
8 RECOVERED BY THE CLAIMANT, EXCLUDING ANY BENEFITS OR ADVANTAGES
9 RECOVERED OR RECOVERABLE IN DISCHARGE OF FAMILIAR SUPPORT
10 OBLIGATION, SUCCESSION AT DEATH, AS PROCEEDS OF LIFE INSURANCE, OR
11 GRATUITIES;

12 2. PAYMENT BY AN EMPLOYER TO HIS EMPLOYEE;

13 3. OBLIGATIONS OF AN INSOLVENT INSURER ARISING OUT
14 OF REINSURANCE CONTRACTS;

15 4. EXCEPT FOR EARNED PREMIUM CLAIMS ON POLICIES
16 THAT ARE NOT REINSURANCE POLICIES, ANY OBLIGATIONS INCURRED AFTER THE
17 DATE THAT THE POLICY:

18 A. EXPIRES;

19 B. IS REPLACED BY THE INSURED;

20 C. IS CANCELED AT THE INSURED'S REQUEST; OR

21 D. HAS OTHERWISE BEEN LEGALLY CANCELED;

22 5. OBLIGATIONS, INCLUDING CLAIMS FOR CONTRIBUTION,
23 INDEMNITY OR SUBROGATION, EQUITABLE OR OTHERWISE, TO INSURERS,
24 INSURANCE POOLS, OR UNDERWRITING ASSOCIATIONS;

25 6. ANY CLAIM THAT IS IN EXCESS OF ANY APPLICABLE
26 LIMITS PROVIDED IN THE INSURANCE POLICY ISSUED BY THE INSOLVENT INSURER;

27 7. ANY AMOUNT ACCRUED AS PUNITIVE OR EXEMPLARY
28 DAMAGES, UNLESS EXPRESSLY COVERED UNDER THE TERMS OF THE POLICY; AND

29 8. TORT CLAIMS OF ANY KIND AGAINST THE INSURER,
30 INCLUDING CLAIMS AGAINST THE INSURER FOR BAD FAITH OR WRONGFUL
31 SETTLEMENT PRACTICES.

32 ~~(4) CLASS 4~~

33 (3) CLASS 3 SHALL CONSIST OF CLAIMS OF A CEDING OR ASSUMING
34 INSURER UNDER A REINSURANCE CONTRACT.

35 ~~(5) CLASS 5~~

36 (4) CLASS 4 SHALL CONSIST OF CLAIMS OF THE FEDERAL GOVERNMENT
37 OTHER THAN CLAIMS INCLUDED IN ~~CLASS 3~~ CLASS 2.

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1 ~~(6) (I) CLASS 6~~

2 (5) (I) CLASS 5 SHALL CONSIST OF DEBTS DUE EMPLOYEES FOR
3 SERVICES AND BENEFITS, CONTRACTUAL OR OTHERWISE, ARISING OUT OF
4 REASONABLE COMPENSATION FOR SERVICES PERFORMED TO THE EXTENT THAT
5 THE DEBTS:

6 1. DO NOT EXCEED 2 MONTHS OF THE EMPLOYEE'S
7 COMPENSATION; AND

8 2. REPRESENT PAYMENT FOR SERVICES PERFORMED
9 WITHIN:

10 A. 6 MONTHS BEFORE THE FILING OF THE PETITION FOR
11 LIQUIDATION; OR

12 B. 1 YEAR BEFORE THE FILING OF THE PETITION FOR
13 REHABILITATION, IF REHABILITATION PRECEDED LIQUIDATION.

14 (II) EXCEPT AS APPROVED BY THE LIQUIDATOR AND THE COURT,
15 PRINCIPAL OFFICERS AND DIRECTORS ARE NOT ENTITLED TO THE BENEFIT OF THIS
16 PRIORITY.

17 (III) THIS PRIORITY SHALL BE INSTEAD OF ANY SIMILAR PRIORITY
18 THAT MAY BE AUTHORIZED BY LAW REGARDING WAGES OR COMPENSATION OF
19 EMPLOYEES.

20 ~~(7) (I) CLASS 7~~

21 (6) (I) CLASS 6 SHALL CONSIST OF CLAIMS OF ANY PERSON,
22 INCLUDING CLAIMS OF:

23 1. STATE OR LOCAL GOVERNMENTS, EXCEPT THOSE
24 SPECIFICALLY CLASSIFIED ELSEWHERE IN THIS SECTION; AND

25 2. CLAIMS OF ATTORNEYS FOR FEES AND EXPENSES OWED
26 TO THEM FOR SERVICES RENDERED IN OPPOSING A FORMAL DELINQUENCY
27 PROCEEDING.

28 (II) IN ORDER TO PROVE A CLAIM FOR ATTORNEYS' FEES AND
29 EXPENSES, THE CLAIMANT MUST SHOW THAT:

30 1. THE INSURER THAT WAS THE SUBJECT OF THE
31 DELINQUENCY PROCEEDING INCURRED THE FEES AND EXPENSES BASED ON ITS
32 BEST KNOWLEDGE, INFORMATION, AND BELIEF, FORMED AFTER REASONABLE
33 INQUIRY, INDICATING THAT OPPOSITION WAS:

34 A. IN THE BEST INTERESTS OF THE PERSON;

35 B. WELL GROUNDED IN FACT; AND

36 C. WARRANTED BY EXISTING LAW OR A GOOD FAITH
37 ARGUMENT FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW;
38 AND

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1 2. OPPOSITION WAS NOT PURSUED BY THE CLAIMANT FOR
2 ANY IMPROPER PURPOSES, TO HARASS, OR TO CAUSE UNNECESSARY DELAY TO OR
3 NEEDLESS INCREASE IN THE COST OF THE LITIGATION.

4 ~~(8) (I) CLASS 8~~

5 (7) (I) CLASS 7 SHALL CONSIST OF CLAIMS OF A STATE OR LOCAL
6 GOVERNMENT FOR A PENALTY OR FORFEITURE.

7 (II) ANY CLAIM BY A STATE OR LOCAL GOVERNMENT UNDER
8 ~~CLASS 7 CLASS 6~~ SHALL BE LIMITED TO THE EXTENT OF THE PECUNIARY LOSS
9 SUSTAINED FROM THE ACT, TRANSACTION, OR PROCEEDING OUT OF WHICH THE
10 PENALTY OR FORFEITURE AROSE, AND THE REASONABLE COST OF BRINGING THE
11 CLAIM.

12 (III) ALL OTHER CLAIMS BY A STATE OR LOCAL GOVERNMENT
13 SHALL BE CONSIDERED ~~CLASS 8~~ CLASS 7 CLAIMS.

14 ~~(9) CLASS 9~~

15 (8) CLASS 8 SHALL CONSIST OF:

16 (I) SURPLUS OR CONTRIBUTION NOTES OR SIMILAR
17 OBLIGATIONS;

18 (II) PREMIUM REFUNDS ON ASSESSABLE POLICIES;

19 (III) INTEREST ON CLAIMS OF ~~CLASSES 1 THROUGH 7~~ CLASSES 1
20 THROUGH 6; AND

21 (IV) ANY OTHER CLAIMS SPECIFICALLY SUBORDINATED TO THIS
22 CLASS.

23 ~~(10) CLASS 10~~

24 (9) CLASS 9 SHALL CONSIST OF CLAIMS OF SHAREHOLDERS OR OTHER
25 OWNERS OF THE INSOLVENT INSURER EXCEPT AS THEY MAY BE QUALIFIED IN
26 ~~CLASS 3 OR 5~~ CLASS 2 OR 4.

27 (F) (1) (I) ANY CLAIMANT OF THIS STATE, ANOTHER STATE, OR A
28 FOREIGN COUNTRY WHO IS ENTITLED TO OR WHO RECEIVES A DIVIDEND UPON A
29 CLAIM OUT OF A STATUTORY DEPOSIT, OUT OF THE PROCEEDS OF ANY BOND, OR
30 OUT OF ANY OTHER ASSET LOCATED IN ANOTHER STATE OR FOREIGN COUNTRY, IS
31 NOT ENTITLED TO ANY FURTHER DIVIDEND FROM THE RECEIVER UNTIL AND
32 UNLESS ALL OTHER CLAIMANTS OF THE SAME CLASS HAVE RECEIVED AN EQUAL
33 DIVIDED ON THEIR CLAIMS REGARDLESS OF LOCATION OF THE ACTS OR
34 CONTRACTS ON WHICH THE CLAIMS OF THE OTHER MEMBERS OF THE CLASS ARE
35 BASED.

36 (II) AFTER EQUALIZATION OF CLAIMS UNDER SUBPARAGRAPH (I)
37 OF THIS PARAGRAPH, ALL CLAIMANTS WITHIN A CLASS SHALL BE ENTITLED TO
38 SHARE IN THE DISTRIBUTION OF FURTHER DIVIDENDS BY THE RECEIVER.

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1 (III) THIS PARAGRAPH DOES NOT APPLY TO SITUATIONS IN WHICH
2 ANY CLAIMANT OF THIS STATE, ANOTHER STATE, OR A FOREIGN COUNTRY IS
3 ENTITLED TO OR RECEIVES A DIVIDEND UPON A CLAIM OUT OF A STATUTORY
4 DEPOSIT, OUT OF THE PROCEEDS OF ANY BOND, OR OUT OF ANY OTHER ASSET
5 LOCATED IN ANOTHER STATE OR FOREIGN COUNTRY IF THE DEPOSIT, PROCEEDS,
6 OR ASSET HAS BEEN DELIVERED TO THE DOMICILIARY LIQUIDATOR.

7 (2) (I) UPON THE DECLARATION OF A DIVIDEND, THE RECEIVER
8 SHALL APPLY THE AMOUNT OF THE DIVIDEND AGAINST ANY INDEBTEDNESS OWED
9 TO THE INSURER BY THE PERSON ENTITLED TO THE DIVIDEND.

10 (II) NO CLAIM MAY BE ALLOWED FOR ANY DEDUCTIBLE CHARGED
11 BY A GUARANTY ASSOCIATION OR BY ANOTHER ENTITY PERFORMING A SIMILAR
12 FUNCTION.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 1997.