

SENATE BILL 837

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2001 Regular Session
(11r2852)

ENROLLED BILL
-- Finance/Economic Matters --

Introduced by **Senator Astle**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Insurance - Insurer Insolvencies - Claims Priority**

3 FOR the purpose of altering the priority of distribution in the event of an insurer
4 insolvency when there are known or potential claims due the federal
5 government; making certain technical changes; and generally relating to
6 priority of claims in the event of an insurer insolvency.

7 BY repealing and reenacting, with amendments,
8 Article - Insurance
9 Section 9-202(a) and 9-227
10 Annotated Code of Maryland
11 (1997 Volume and 2000 Supplement)

12 **Preamble**

13 ~~WHEREAS, In U.S. Dept. of Treasury v. Fabe, 508 U.S. 491 (1993), the United~~
14 ~~States Supreme Court held that a state may give priority to policyholder claims and~~

1 expenses of administering the insolvency above the claims of the federal government
2 in the event of an insurer insolvency; and

3 WHEREAS, In U.S. Dept. of Treasury v. Fabe, the United States Supreme Court
4 also held that a state statute governing the priority of claims in the event of an
5 insurer insolvency is preempted by federal law to the extent that it gives priority to
6 any other type of claim over the claims of the federal government; and

7 WHEREAS, The statutory priority scheme at issue in U.S. Dept. of Treasury v.
8 Fabe was struck down in its entirety on remand because it gave priority to claims
9 other than policyholder claims and administrative expenses above the claims of the
10 federal government, and because the statute was found not to be severable; and

11 WHEREAS, It is the intent of the General Assembly to ensure that, in the event
12 there are federal claims against an insolvent insurer in Maryland, the claims of the
13 federal government do not take priority over policyholder claims or the expenses of
14 administering the insolvency; now, therefore,

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

17 **Article - Insurance**

18 9-202.

19 (a) Sections 9-201(b), (d), (e), (f), (g), (j), (k), (l), (m), and (n), 9-203, 9-207(a),
20 9-218, 9-219, 9-220, 9-226(f) and (g), and [9-227(a), (d), (e), (f), (g), and (h)] 9-227(A),
21 (E), (F), (G), (H), AND (I) of this subtitle are the "Uniform Insurers Liquidation Act".

22 9-227.

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

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

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

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

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

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

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

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

10 (3) claims of:

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

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

13 (iii) any similar organization in another state.

14 (D) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF
15 THIS SECTION, IF THERE ARE KNOWN OR POTENTIAL CLAIMS DUE THE FEDERAL
16 GOVERNMENT, THE FOLLOWING SHALL BE THE PRIORITY OF DISTRIBUTION:

17 (1) EXPENSES OF ADMINISTRATION;

18 (2) THE FOLLOWING CLAIMS WITHOUT PRIORITY AMONG THEM:

19 (I) CLAIMS MADE BY POLICYHOLDERS, BENEFICIARIES, OR
20 INSURED, THAT ARISE FROM AND WITHIN THE COVERAGE OF AND ARE NOT IN
21 EXCESS OF THE APPLICABLE LIMITS OF POLICIES AND INSURANCE CONTRACTS
22 ISSUED BY THE INSURER;

23 (II) LIABILITY CLAIMS AGAINST INSURED THAT ARE WITHIN THE
24 COVERAGE OF AND ARE NOT IN EXCESS OF THE APPLICABLE LIMITS OF POLICIES
25 AND INSURANCE CONTRACTS ISSUED BY THE INSURER; AND

26 (III) CLAIMS OF:

27 1. THE PROPERTY AND CASUALTY INSURANCE GUARANTY
28 CORPORATION;

29 2. THE LIFE AND HEALTH INSURANCE GUARANTY
30 CORPORATION; AND

31 3. ANY SIMILAR ORGANIZATION IN ANOTHER STATE;

32 (3) CLAIMS OF THE FEDERAL GOVERNMENT NOT INCLUDED IN ITEM (2)
33 OF THIS SUBSECTION;

1 (4) THE FIRST \$500 OF COMPENSATION OR WAGES OWED TO AN OFFICER
2 OR EMPLOYEE OF AN INSURER FOR SERVICES RENDERED WITHIN 3 MONTHS BEFORE
3 THE COMMENCEMENT OF A DELINQUENCY PROCEEDING AGAINST THE INSURER,
4 WHICH SHALL BE INSTEAD OF ANY OTHER SIMILAR PRIORITY THAT MAY BE
5 AUTHORIZED BY LAW AS TO WAGES OR COMPENSATION;

6 (5) CLAIMS FOR TAXES AND DEBTS DUE ANY STATE OR LOCAL
7 GOVERNMENT; AND

8 (6) ALL OTHER CLAIMS OF GENERAL CREDITORS NOT FALLING WITHIN
9 ANY OTHER PRIORITY UNDER THIS SUBSECTION.

10 [(d)] (E) (1) The owners of special deposit claims against an insurer for
11 which a receiver is appointed in this State or another state have priority against their
12 special deposits as provided by the law that governs the creation and maintenance of
13 special deposits.

14 (2) If there is a deficiency in a special deposit so that the claims secured
15 by the special deposit are not fully discharged, the claimants may share in the general
16 assets after general creditors, and claimants against other special deposits who have
17 received smaller percentages from their respective special deposits, have been paid
18 percentages of their claims equal to the percentage paid from the special deposit.

19 [(e)] (F) (1) The owner of a secured claim against an insurer for which a
20 receiver has been appointed in this State or another state may:

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

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

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

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

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

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

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

33 [(f)] (G) (1) Current financing moneys that, in accordance with regulations
34 adopted by the Health Services Cost Review Commission, are provided by an insurer,
35 nonprofit health service plan, or health maintenance organization to a hospital for
36 discounted hospital rates are deemed to be security for the amount of outstanding
37 charges owed by the insurer, nonprofit health service plan, or health maintenance

1 organization to the hospital for bills or claims for services provided by the hospital
2 before the delinquency proceeding.

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

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

8 (ii) may discharge its claim against the insurer, nonprofit health
9 service plan, or health maintenance organization as provided under subsection [(e)]
10 (F) of this section.

11 [(g)] (H) (1) In a delinquency proceeding against an insurer domiciled in the
12 State, claims owing to residents of ancillary states are preferred claims if similar
13 claims are preferred under the law of this State.

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

17 [(h)] (I) In a delinquency proceeding against an insurer domiciled in a
18 reciprocal state, claims owing to residents of this State are preferred claims if similar
19 claims are preferred under the law of that state.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2001.