

SENATE BILL 837

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2001 Regular Session  
11r2852  
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By: **Senator Astle**

Introduced and read first time: February 19, 2001

Assigned to: Rules

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A BILL ENTITLED

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  
15 expenses of administering the insolvency above the claims of the federal government  
16 in the event of an insurer insolvency; and

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

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

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

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 9-202.

5 (a) Sections 9-201(b), (d), (e), (f), (g), (j), (k), (l), (m), and (n), 9-203, 9-207(a),  
6 9-218, 9-219, 9-220, 9-226(f) and (g), and [9-227(a), (d), (e), (f), (g), and (h)] 9-227(A),  
7 (E), (F), (G), (H), AND (I) of this subtitle are the "Uniform Insurers Liquidation Act".

8 9-227.

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

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

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

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

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

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

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

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

32 (3) claims of:

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

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

1 (iii) any similar organization in another state.

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

5 (1) EXPENSES OF ADMINISTRATION;

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

7 (I) CLAIMS MADE BY POLICYHOLDERS, BENEFICIARIES, OR  
8 INSUREDS, THAT ARISE FROM AND WITHIN THE COVERAGE OF AND ARE NOT IN  
9 EXCESS OF THE APPLICABLE LIMITS OF POLICIES AND INSURANCE CONTRACTS  
10 ISSUED BY THE INSURER;

11 (II) LIABILITY CLAIMS AGAINST INSUREDS THAT ARE WITHIN THE  
12 COVERAGE OF AND ARE NOT IN EXCESS OF THE APPLICABLE LIMITS OF POLICIES  
13 AND INSURANCE CONTRACTS ISSUED BY THE INSURER; AND

14 (III) CLAIMS OF:

15 1. THE PROPERTY AND CASUALTY INSURANCE GUARANTY  
16 CORPORATION;

17 2. THE LIFE AND HEALTH INSURANCE GUARANTY  
18 CORPORATION; AND

19 3. ANY SIMILAR ORGANIZATION IN ANOTHER STATE;

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

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

27 (5) CLAIMS FOR TAXES AND DEBTS DUE ANY STATE OR LOCAL  
28 GOVERNMENT; AND

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

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

35 (2) If there is a deficiency in a special deposit so that the claims secured  
36 by the special deposit are not fully discharged, the claimants may share in the general

1 assets after general creditors, and claimants against other special deposits who have  
2 received smaller percentages from their respective special deposits, have been paid  
3 percentages of their claims equal to the percentage paid from the special deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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