

SENATE BILL 837

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2001 Regular Session  
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By: **Senator Astle**  
Introduced and read first time: February 19, 2001  
Assigned to: Rules  
Re-referred to: Finance, February 22, 2001

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Committee Report: Favorable  
Senate action: Adopted  
Read second time: March 23, 2001

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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  
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

1 other than policyholder claims and administrative expenses above the claims of the  
2 federal government, and because the statute was found not to be severable; and

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

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

9 **Article - Insurance**

10 9-202.

11 (a) Sections 9-201(b), (d), (e), (f), (g), (j), (k), (l), (m), and (n), 9-203, 9-207(a),  
12 9-218, 9-219, 9-220, 9-226(f) and (g), and [9-227(a), (d), (e), (f), (g), and (h)] 9-227(A),  
13 (E), (F), (G), (H), AND (I) of this subtitle are the "Uniform Insurers Liquidation Act".

14 9-227.

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

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

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

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

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

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

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

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

4           (3)     claims of:

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

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

7                   (iii)   any similar organization in another state.

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

11           (1)     EXPENSES OF ADMINISTRATION;

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

13                   (I)     CLAIMS MADE BY POLICYHOLDERS, BENEFICIARIES, OR  
14 INSUREDS, THAT ARISE FROM AND WITHIN THE COVERAGE OF AND ARE NOT IN  
15 EXCESS OF THE APPLICABLE LIMITS OF POLICIES AND INSURANCE CONTRACTS  
16 ISSUED BY THE INSURER;

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

20                   (III)   CLAIMS OF:

21                           1.     THE PROPERTY AND CASUALTY INSURANCE GUARANTY  
22 CORPORATION;

23                           2.     THE LIFE AND HEALTH INSURANCE GUARANTY  
24 CORPORATION; AND

25                           3.     ANY SIMILAR ORGANIZATION IN ANOTHER STATE;

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

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

33                   (5)     CLAIMS FOR TAXES AND DEBTS DUE ANY STATE OR LOCAL  
34 GOVERNMENT; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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