

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

SENATE BILL NO. 377

(By Mr. Quiley)



PASSED March 4 1978

In Effect minity days from Passage



ENROLLED

Senate Bill No. 377

(By MR. NEELEY)

[Passed March 4, 1978; in effect ninety days from passage.]

AN ACT to amend article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six, relating to insolvent insurance companies; the West Virginia insurance guaranty association; establishing a priority of certain claims to be allowed by receivership courts so as to make policyholders, beneficiaries, insureds and the West Virginia guaranty association preferred creditors; and immediate access to the assets of an insolvent insurer.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-six, to read as follows:

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-36. Creating preference among creditors; providing immediate access to assets.

1 (a) Upon the issuance of a proper court order placing
2 a domestic insurer in receivership or placing a foreign
3 insurer in ancillary receivership for rehabilitation or
4 liquidation, pursuant to this article, all policyholders,
5 beneficiaries and insureds of such insurer, and the West
6 Virginia insurance guaranty association, shall be pre-
7 ferred creditors of said insurer with respect to claims
8 arising from and within the coverages of and not in
9 excess of the applicable limits of insurance policies and
10 contracts issued by the company, liability claims against
11 insureds which claims are within the coverage of and

12 not in excess of the applicable limits of insurance policies
13 and insurance contracts issued by the company, and
14 claims of the West Virginia insurance guaranty associa-
15 tion and any similar organization in another state. With
16 the exception of costs of administration of said receiver-
17 ship, liens, judgments obtained prior to initiation of
18 delinquency proceedings, and secured creditors claims,
19 no claim of a general creditor shall be preferred over
20 that of a policyholder, beneficiary and insured of an
21 insurer in receivership or that of the West Virginia in-
22 surance guaranty association.

23 (b) (1) Within one hundred twenty days of a final
24 determination of insolvency of an insurance company
25 by the circuit court, the commissioner shall make ap-
26 plication to the court for approval of a proposal to dis-
27 perse assets out of such company's marshalled assets,
28 from time to time as such assets become available, to
29 the West Virginia insurance guaranty association includ-
30 ing any assets received from any entity or person per-
31 forming a similar function in another state. The West
32 Virginia insurance guaranty association and any entity or
33 person performing a similar function in other states shall
34 hereinafter be referred to collectively as the associations.

35 (2) Such proposal shall at least include provisions
36 for:

37 (A) Reserving amounts for the payment of expenses
38 of administration and of claims falling within the
39 priorities established in the uniform insurers liquida-
40 tion act but only with respect to such priorities higher
41 than that of the associations;

42 (B) Disbursement of the assets marshalled to date
43 and subsequent disbursement of assets as they become
44 available;

45 (C) Equitable allocation of disbursements to each of
46 the associations entitled thereto;

47 (D) The securing by the commissioner from each of
48 the associations entitled to disbursements pursuant to
49 this section of an agreement to return to the commis-
50 sioner such assets previously disbursed as may be re-
51 quired to pay claims of secured creditors and claims
52 falling within the priorities established in section twenty-

53 seven of this article. No bond shall be required of any such
54 association; and

55 (E) A full report to be made by the association to
56 the commissioner accounting for all assets so dispersed
57 to the association, all disbursements made therefrom,
58 any interest earned by the association on such assets
59 and any other matter as the court may direct.

60 (3) The commissioner's proposal shall provide for
61 disbursements to the associations in amounts estimated
62 at least equal to the claim payments made or to be
63 made thereby for which such associations could assert
64 a claim against the commissioner, and shall further
65 provide that if the assets available for disbursement from
66 time to time do not equal or exceed the amount of such
67 claim payments made or to be made by the association
68 then disbursements shall be in the amount of available
69 assets.

70 (4) Notice of such application shall be given to the
71 associations in and to the commissioners of insurance
72 of each of the states. Any such notice shall be deemed
73 to have been given when deposited in the United States
74 mail, first class postage prepaid, at least thirty days
75 prior to submission of such application to the court.
76 Action on the application may be taken by the court
77 provided the above required notice has been given and
78 provided that the commissioner's proposal complies with
79 subparagraphs 2 (A) and 2 (B) hereof.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Lawrence C. Christman
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Willoughby
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. F. Brantley
President of the Senate

Donald L. Dopp
Speaker House of Delegates

The within is approved this the 11
day of March, 1978.

John I. Rhyker
Governor

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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date March 11, 1978

Time 11:00 A.M.

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GOV. OF STATE