

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 J. Rhyne  
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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OFFICE  
GOV. OF STATE