WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

HOUSE BILL No. 4853

(By Delegate Douglas, Hutchins, Kemper, Faircloth, Stachler, Walters and Loucks)

Passed March 9, 1996
In Effect Ninety Days From Passage
AN ACT to amend and reenact section twenty-seven, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the priority of distribution of claims against the estates of hospital service corporations, medical service corporations, dental service corporations and health service corporations in liquidation.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

§33-24-27. Order of distribution.

1 This section, as amended by this act, which amendment shall be effective from passage, shall retrospectively apply to and govern all claims filed in any proceeding to liquidate a corporation which is pending on the effective date of this section and to all claims filed in any proceeding to liquidate a corporation that is commenced on or after the effective date of this revised section, notwithstanding any other provision of this article.

9 This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. Such immediate action is required to ensure the orderly and prompt payment of
claims filed in pending proceedings to liquidate corporations under this article and such proceedings that are commenced on or after the effective date of this act. Therefore, this act shall go into immediate effect upon passage and have retrospective effect on pending liquidation proceedings under this article.

The priority of distribution of claims from the corporation estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

The order of distribution shall be:

(a) Class I. The costs and expenses of administration, including, but not limited to, the following:

(1) The actual and necessary costs of preserving or recovering the assets of the corporation;

(2) Compensation for all services rendered in the liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney’s fees; and

(6) All expenses incurred by the department of insurance arising out of the enforcement of chapter thirty-three and its regulations.

(b) Class II. All claims for refund of unearned premiums under nonassessable policies and all claims of policyholders including such claims of the federal or any state or local government as policyholders for losses incurred and third party claims of an insolvent insurer.

(c) Class III. Claims of the federal government other than as an insured policyholder.

(d) Class IV. Debts due to employees for compensation under the provision of section thirty-four of this
article and all reasonable claims of the West Virginia
insurance guaranty associations and associations or entities
performing a similar function in other states.

(e) Class V. Claims of general creditors including
claims of ceding and assuming companies in their
capacity as such.

(f) Class VI. Claims of any state or local government.
Claims, including those of any governmental body for a
penalty or forfeiture, shall be allowed in this class only to
the extent of the pecuniary loss sustained from the act,
transaction, or proceeding out of which the penalty or
forfeiture arose, with reasonable and actual costs
occasioned thereby. The remainder of such claims shall
be postponed to the class of claims under subdivision (h)
of this section.

(g) Class VII. Claims filed late or any other claims
other than claims under subdivision (h) of this section.

(h) Class VIII. Surplus or contribution notes, or
similar obligations and premium refunds on assessable
policies. Payments to members of domestic mutual
corporations shall be limited in accordance with law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _______ approved _______ the _______ day of _______, _______. 1996

Governor