

SENATE BILL 839

C4

6lr2199
CF 6lr2880

By: **Senator Feldman**

Introduced and read first time: February 5, 2016

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Rate Filings – Trade Secrets**

3 FOR the purpose of establishing the confidentiality of certain information that an insurer
4 files with the Maryland Insurance Commissioner and identifies as proprietary
5 rate-related information; authorizing the Commissioner to make a certain
6 determination concerning certain material and to make the material available to the
7 public under certain circumstances; requiring the Commissioner to give an insurer
8 certain notice of a certain determination at a certain time; authorizing the
9 Commissioner to disclose certain information for certain purposes or to certain
10 persons in a certain manner; requiring the Commissioner to give an insurer certain
11 notice at a certain time before disclosing certain information under certain
12 circumstances; authorizing an insurer to seek to have a certain disclosure made in a
13 certain manner; providing that certain disclosures do not waive a certain privilege
14 or claim of confidentiality of certain information; defining a certain term; and
15 generally relating to insurance rate filings and confidentiality.

16 BY repealing and reenacting, with amendments,
17 Article – Insurance
18 Section 11–307
19 Annotated Code of Maryland
20 (2011 Replacement Volume and 2015 Supplement)

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

23 **Article – Insurance**

24 11–307.

25 (a) (1) Except as otherwise provided in this subsection, each authorized
26 insurer and each rating organization that has been designated by an insurer for the filing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of rates under subsection (b) of this section shall file with the Commissioner all rates and
 2 supplementary rate information and all changes and amendments of rates and
 3 supplementary information made by it for use in the State on or before the date they become
 4 effective.

5 (2) Rates and supplementary rate information need not be filed for inland
 6 marine risks that by general custom are not written according to manual rules or rating
 7 plans.

8 (b) (1) An insurer may itself establish rates and supplementary rate
 9 information based on the factors in § 11–306 of this subtitle.

10 (2) Except for workers' compensation insurance rates, an insurer may use
 11 rates and supplementary rate information prepared and filed with the Commissioner by a
 12 rating organization of which it is a member or subscriber, with average loss factors or
 13 expense factors determined by the rating organization or with modification for its own
 14 expense and loss experience as the credibility of that experience allows.

15 (3) If an insurer uses rates and supplementary rate information prepared
 16 by a rating organization:

17 (i) the insurer shall notify the Commissioner that it uses rates and
 18 supplementary rate information prepared and filed with the Commissioner by a designated
 19 rating organization of which it is a member or subscriber and shall provide the
 20 Commissioner with information about modifications of those rates and supplementary rate
 21 information that is necessary to inform the Commissioner fully; and

22 (ii) subject to modifications filed by the insurer, the insurer's rates
 23 and supplementary rate information shall be those filed periodically by the rating
 24 organization, including any amendments to those filings.

25 (c) (1) IN THIS SUBSECTION, "PROPRIETARY RATE-RELATED
 26 INFORMATION":

27 (I) MEANS A RATING MODEL; AND

28 (II) INCLUDES THE FORMULAS, ALGORITHMS, ANALYSES, AND
 29 SPECIFIC WEIGHTS GIVEN TO VARIABLES USED IN THE MODEL.

30 [(1)] (2) (I) [Each] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF
 31 THIS SUBSECTION, EACH filing and any supporting information filed under this subtitle
 32 shall be open to public inspection as soon as filed.

33 [(2)] (II) On request and payment of a reasonable charge, a person may
 34 obtain copies of a filing and any supporting information.

1 **(3) (I) INFORMATION THAT AN INSURER FILES WITH THE**
2 **COMMISSIONER AND IDENTIFIES AS PROPRIETARY RATE-RELATED INFORMATION:**

3 **1. CONSTITUTES A TRADE SECRET AND CONFIDENTIAL**
4 **COMMERCIAL INFORMATION;**

5 **2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF**
6 **THIS PARAGRAPH, SHALL BE KEPT CONFIDENTIAL BY THE COMMISSIONER; AND**

7 **3. IS NOT SUBJECT TO SUBPOENA.**

8 **(II) IF THE COMMISSIONER DETERMINES THAT SOME OR ALL OF**
9 **THE MATERIAL THAT AN INSURER FILES AND IDENTIFIES AS PROPRIETARY**
10 **RATE-RELATED INFORMATION DOES NOT CONSTITUTE PROPRIETARY**
11 **RATE-RELATED INFORMATION AS DEFINED IN PARAGRAPH (1) OF THIS**
12 **SUBSECTION, THE COMMISSIONER SHALL GIVE THE INSURER WRITTEN NOTICE OF**
13 **THAT DETERMINATION AT LEAST 10 BUSINESS DAYS BEFORE MAKING THE**
14 **MATERIAL AVAILABLE TO THE PUBLIC.**

15 **(III) THIS PARAGRAPH DOES NOT PROHIBIT THE**
16 **COMMISSIONER FROM DISCLOSING AN INSURER'S PROPRIETARY RATE-RELATED**
17 **INFORMATION:**

18 **1. IN FURTHERANCE OF A REGULATORY OR LEGAL**
19 **ACTION THAT THE COMMISSIONER UNDERTAKES IN PERFORMING THE**
20 **COMMISSIONER'S DUTIES UNDER THIS ARTICLE; OR**

21 **2. IF THE RECIPIENT ENTERS INTO A WRITTEN**
22 **AGREEMENT TO MAINTAIN THE CONFIDENTIALITY OF THE PROPRIETARY**
23 **RATE-RELATED INFORMATION, TO:**

24 **A. AN OUTSIDE CONSULTANT THAT THE COMMISSIONER**
25 **ENGAGES TO ASSIST THE COMMISSIONER IN REVIEWING THE INSURER'S RATE**
26 **FILING;**

27 **B. ANOTHER STATE'S INSURANCE REGULATORY**
28 **AGENCY;**

29 **C. THE NATIONAL ASSOCIATION OF INSURANCE**
30 **COMMISSIONERS; OR**

31 **D. A STATE OR FEDERAL LAW ENFORCEMENT**
32 **AUTHORITY.**

1 **(IV) THE COMMISSIONER SHALL NOTIFY THE INSURER IN**
2 **WRITING AT LEAST 10 BUSINESS DAYS BEFORE THE COMMISSIONER DISCLOSES ANY**
3 **OF THE INSURER'S PROPRIETARY RATE-RELATED INFORMATION UNDER**
4 **SUBPARAGRAPH (III) OF THIS PARAGRAPH.**

5 **(V) IN ADDITION TO ANY OTHER RIGHTS AN INSURER MAY HAVE**
6 **UNDER ANY OTHER APPLICABLE LAW, THE INSURER MAY SEEK TO HAVE ANY**
7 **DISCLOSURE OF THE INSURER'S PROPRIETARY RATE-RELATED INFORMATION**
8 **UNDER SUBPARAGRAPH (III)1 OF THIS PARAGRAPH BE MADE UNDER SEAL OR**
9 **OTHER PROTECTION OF CONFIDENTIALITY.**

10 **(VI) THERE IS NO WAIVER OF ANY APPLICABLE PRIVILEGE OR**
11 **CLAIM OF CONFIDENTIALITY WITH REGARD TO ANY PROPRIETARY RATE-RELATED**
12 **INFORMATION THAT IS DISCLOSED UNDER SUBPARAGRAPH (III) OF THIS**
13 **PARAGRAPH.**

14 (d) (1) The Commissioner may investigate and determine whether or not rates
15 in the State are excessive, inadequate, or unfairly discriminatory.

16 (2) In an investigation and determination under this subsection, the
17 Commissioner shall give due consideration to the factors specified in § 11-306 of this
18 subtitle.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2016.