

SENATE BILL 839

C4

6lr2199
CF HB 958

By: ~~Senator Feldman~~ Senators Feldman, Middleton, Astle, Benson, Hershey,
Jennings, Kelley, Klausmeier, Mathias, and Reilly

Introduced and read first time: February 5, 2016

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 22, 2016

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of establishing the confidentiality, under certain circumstances, of certain
4 information that an insurer files with the Maryland Insurance Commissioner and
5 identifies as proprietary rate-related information; ~~authorizing the Commissioner to~~
6 ~~make a certain determination concerning certain material and to make the material~~
7 ~~available to the public~~ providing that certain information is not subject to subpoena
8 under certain circumstances; requiring the Commissioner, if the Commissioner
9 makes a certain determination, to give an insurer certain notice of a certain
10 determination and to make certain material open to public inspection at a certain
11 time, with a certain exception; authorizing the Commissioner to disclose certain
12 information for certain purposes or to certain persons in a certain manner; requiring
13 the People’s Insurance Counsel Division to maintain the confidentiality of certain
14 proprietary rate-related information; requiring the Commissioner to give an insurer
15 certain notice at a certain time before disclosing certain information under certain
16 circumstances; authorizing an insurer to seek to have a certain disclosure made in a
17 certain manner; providing that certain disclosures do not waive a certain privilege
18 or claim of confidentiality of certain information; providing for the construction of
19 certain provisions of this Act; defining a certain term; and generally relating to
20 insurance rate filings and confidentiality.

21 BY repealing and reenacting, with amendments,

22 Article – Insurance

23 Section 11-307

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2011 Replacement Volume and 2015 Supplement)

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

5 **Article – Insurance**

6 11–307.

7 (a) (1) Except as otherwise provided in this subsection, each authorized
8 insurer and each rating organization that has been designated by an insurer for the filing
9 of rates under subsection (b) of this section shall file with the Commissioner all rates and
10 supplementary rate information and all changes and amendments of rates and
11 supplementary information made by it for use in the State on or before the date they become
12 effective.

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

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

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

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

25 (i) the insurer shall notify the Commissioner that it uses rates and
26 supplementary rate information prepared and filed with the Commissioner by a designated
27 rating organization of which it is a member or subscriber and shall provide the
28 Commissioner with information about modifications of those rates and supplementary rate
29 information that is necessary to inform the Commissioner fully; and

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

33 (c) **(1) IN THIS SUBSECTION, “PROPRIETARY RATE-RELATED**
34 **INFORMATION”:**

35 **(I) MEANS A RATING MODEL; AND**

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

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

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

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

10 1. CONSTITUTES A TRADE SECRET AND CONFIDENTIAL
11 COMMERCIAL INFORMATION;

12 2. SUBJECT TO SUBPARAGRAPH (II) OF THIS
13 PARAGRAPH AND EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
14 PARAGRAPH, SHALL BE KEPT CONFIDENTIAL BY THE COMMISSIONER; AND

15 3. IS NOT SUBJECT TO SUBPOENA SERVED ON THE
16 COMMISSIONER OR ANY RECIPIENT OF PROPRIETARY RATE-RELATED
17 INFORMATION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH.

18 (II) 1. ~~IF EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF~~
19 THIS SUBPARAGRAPH, IF THE COMMISSIONER DETERMINES THAT SOME OR ALL OF
20 THE MATERIAL THAT AN INSURER FILES AND IDENTIFIES AS PROPRIETARY
21 RATE-RELATED INFORMATION DOES NOT CONSTITUTE PROPRIETARY
22 RATE-RELATED INFORMATION AS DEFINED IN PARAGRAPH (1) OF THIS
23 SUBSECTION, THE COMMISSIONER SHALL:

24 A. GIVE THE INSURER WRITTEN NOTICE OF THAT
25 DETERMINATION AT LEAST 10 BUSINESS DAYS BEFORE MAKING THE MATERIAL
26 AVAILABLE TO THE PUBLIC; AND

27 B. MAKE THE MATERIAL OPEN TO PUBLIC INSPECTION
28 10 BUSINESS DAYS AFTER THE DATE THE COMMISSIONER GIVES NOTICE OF THE
29 DETERMINATION TO THE INSURER.

30 2. THE COMMISSIONER MAY NOT DISCLOSE THE
31 MATERIAL IF:

1 **A. THE INSURER HAS NOT PUT THE RATE FILING INTO**
2 **EFFECT; AND**

3 **B. WITHIN THE TIME PERIOD DESCRIBED IN**
4 **SUBSUBPARAGRAPH 1B OF THIS SUBPARAGRAPH, THE INSURER WITHDRAWS THE**
5 **RATE FILING AND NOTIFIES THE COMMISSIONER THAT THE RATE FILING IS**
6 **WITHDRAWN.**

7 **(III) THIS PARAGRAPH DOES NOT PROHIBIT THE**
8 **COMMISSIONER FROM DISCLOSING AN INSURER'S PROPRIETARY RATE-RELATED**
9 **INFORMATION:**

10 **1. IN FURTHERANCE OF A REGULATORY OR LEGAL**
11 **ACTION THAT THE COMMISSIONER UNDERTAKES IN PERFORMING THE**
12 **COMMISSIONER'S DUTIES UNDER THIS ARTICLE; ~~OR~~**

13 **2. IF THE RECIPIENT ENTERS INTO A WRITTEN**
14 **AGREEMENT TO MAINTAIN THE CONFIDENTIALITY OF THE PROPRIETARY**
15 **RATE-RELATED INFORMATION, TO:**

16 **A. AN OUTSIDE CONSULTANT THAT THE COMMISSIONER**
17 **ENGAGES TO ASSIST THE COMMISSIONER IN REVIEWING THE INSURER'S RATE**
18 **FILING;**

19 **B. ANOTHER STATE'S INSURANCE REGULATORY**
20 **AGENCY;**

21 **C. THE NATIONAL ASSOCIATION OF INSURANCE**
22 **COMMISSIONERS; OR**

23 **D. A STATE OR FEDERAL LAW ENFORCEMENT**
24 **AUTHORITY, INCLUDING THE UNITED STATES DEPARTMENT OF JUSTICE AND THE**
25 **MARYLAND ATTORNEY GENERAL, IF ACTING IN A LAW ENFORCEMENT CAPACITY;**
26 **OR**

27 **3. IF THE PROPRIETARY RATE-RELATED INFORMATION**
28 **IS PART OF A HOMEOWNER'S INSURANCE OR MEDICAL MALPRACTICE INSURANCE**
29 **RATE FILING, TO THE PEOPLE'S INSURANCE COUNSEL DIVISION ACTING UNDER §**
30 **6-306 OF THE STATE GOVERNMENT ARTICLE.**

31 **(IV) THE PEOPLE'S INSURANCE COUNSEL DIVISION SHALL**
32 **MAINTAIN THE CONFIDENTIALITY OF PROPRIETARY RATE-RELATED INFORMATION**
33 **DISCLOSED TO THE DIVISION UNDER ITEM 3 OF THIS SUBPARAGRAPH.**

1 ~~(IV)~~ (V) 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)~~ (VI) IN ADDITION TO ANY OTHER RIGHTS AN INSURER MAY
6 HAVE 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)~~ (VII) THERE IS NO WAIVER OF ANY APPLICABLE PRIVILEGE
11 OR CLAIM OF CONFIDENTIALITY WITH REGARD TO ANY PROPRIETARY
12 RATE-RELATED INFORMATION THAT IS DISCLOSED UNDER SUBPARAGRAPH (III) OF
13 THIS PARAGRAPH.

14 (4) THIS SUBSECTION MAY NOT BE CONSTRUED TO:

15 (I) AUTHORIZE AN INSURER TO DESIGNATE THE RATING
16 FACTORS USED TO CALCULATE THE PREMIUM AS PROPRIETARY RATE-RELATED
17 INFORMATION; OR

18 (II) AUTHORIZE THE COMMISSIONER TO KEEP THE RATING
19 FACTORS CONFIDENTIAL.

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

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

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