

Chapter 499

(House Bill 958)

AN ACT concerning

Insurance – Rate Filings – Trade Secrets

FOR the purpose of establishing the confidentiality, under certain circumstances, of certain information that an insurer files with the Maryland Insurance Commissioner and identifies as proprietary rate-related information; ~~authorizing the Commissioner to make a certain determination concerning certain material and to make the material available to the public~~ providing that certain information is not subject to subpoena under certain circumstances; requiring the Commissioner, if the Commissioner makes a certain determination, to give an insurer certain notice of a certain determination and to make certain material open to public inspection at a certain time, with a certain exception; authorizing the Commissioner to disclose certain information for certain purposes or to certain persons in a certain manner; *requiring the People's Insurance Counsel Division to maintain the confidentiality of certain proprietary rate-related information; allowing the Division to disclose certain proprietary rate-related information to a certain consultant under certain circumstances;* requiring the Commissioner to give an insurer certain notice at a certain time before disclosing certain information under certain circumstances; authorizing an insurer to seek to have a certain disclosure made in a certain manner; providing that certain disclosures do not waive a certain privilege or claim of confidentiality of certain information; providing for the construction of certain provisions of this Act; defining a certain term; and generally relating to insurance rate filings and confidentiality.

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

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

Article – Insurance

11–307.

(a) (1) Except as otherwise provided in this subsection, each authorized insurer and each rating organization that has been designated by an insurer for the filing of rates under subsection (b) of this section shall file with the Commissioner all rates and supplementary rate information and all changes and amendments of rates and

supplementary information made by it for use in the State on or before the date they become effective.

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

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

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

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

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

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

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

(I) MEANS A RATING MODEL; AND

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

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

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

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

1. CONSTITUTES A TRADE SECRET AND CONFIDENTIAL COMMERCIAL INFORMATION;

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

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

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

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

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

2. THE COMMISSIONER MAY NOT DISCLOSE THE MATERIAL IF:

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

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

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

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

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

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

B. ANOTHER STATE'S INSURANCE REGULATORY AGENCY;

C. THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; OR

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

3. IF THE PROPRIETARY RATE-RELATED INFORMATION IS PART OF A HOMEOWNER'S INSURANCE RATE FILING, TO THE PEOPLE'S INSURANCE COUNSEL DIVISION ACTING UNDER § 6-306 OF THE STATE GOVERNMENT ARTICLE.

(IV) 1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, THE PEOPLE'S INSURANCE COUNSEL DIVISION SHALL MAINTAIN THE CONFIDENTIALITY OF PROPRIETARY RATE-RELATED INFORMATION DISCLOSED TO THE DIVISION UNDER SUBPARAGRAPH (III)3 OF THIS PARAGRAPH.

2. THE PEOPLE'S INSURANCE COUNSEL DIVISION MAY DISCLOSE PROPRIETARY RATE-RELATED INFORMATION TO AN OUTSIDE CONSULTANT THAT THE DIVISION ENGAGES TO ASSIST THE DIVISION IN REVIEWING A HOMEOWNER'S INSURANCE RATE FILING, PROVIDED THAT THE OUTSIDE CONSULTANT ENTERS INTO A WRITTEN AGREEMENT TO MAINTAIN THE CONFIDENTIALITY OF THE PROPRIETARY RATE-RELATED INFORMATION.

~~(IV)~~ (V) THE COMMISSIONER SHALL NOTIFY THE INSURER IN WRITING AT LEAST 10 BUSINESS DAYS BEFORE THE COMMISSIONER DISCLOSES ANY

OF THE INSURER'S PROPRIETARY RATE-RELATED INFORMATION UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH.

~~(v)~~ (VI) IN ADDITION TO ANY OTHER RIGHTS AN INSURER MAY HAVE UNDER ANY OTHER APPLICABLE LAW, THE INSURER MAY SEEK TO HAVE ANY DISCLOSURE OF THE INSURER'S PROPRIETARY RATE-RELATED INFORMATION UNDER SUBPARAGRAPH (III)1 OF THIS PARAGRAPH BE MADE UNDER SEAL OR OTHER PROTECTION OF CONFIDENTIALITY.

~~(vi)~~ (VII) THERE IS NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY WITH REGARD TO ANY PROPRIETARY RATE-RELATED INFORMATION THAT IS DISCLOSED UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH.

(4) THIS SUBSECTION MAY NOT BE CONSTRUED TO:

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

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

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

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

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

Approved by the Governor, May 10, 2016.