

Chapter 263

(Senate Bill 72)

AN ACT concerning

Workers' Compensation – Tiered Rating Plans and Merit Rating Plans

FOR the purpose of authorizing a workers' compensation insurer to develop a certain tiered rating plan; requiring a workers' compensation insurer to submit a certain tiered rating plan to the Insurance Commissioner at least a certain number of days in advance of the tiered rating plan's use; requiring the Commissioner to disapprove a certain tiered rating plan under certain circumstances; authorizing a workers' compensation insurer to use a certain merit rating plan under certain circumstances; and generally relating to workers' compensation insurance.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 11–329

Annotated Code of Maryland

(2011 Replacement Volume and 2016 Supplement)

(As enacted by Chapter 394 of the Acts of the General Assembly of 2016)

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

Article – Insurance

11–329.

(a) Each workers' compensation insurer shall:

- (1) be a member of a workers' compensation rating organization; and
- (2) adhere to the policy forms filed by the rating organization.

(b) (1) Each workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan filed with the Commissioner by a rating organization designated by and subject to disapproval by the Commissioner.

(2) (i) An insurer may develop subclassifications of the uniform classification system on which a rate may be made.

(ii) Any subclassification developed under subparagraph (i) of this paragraph shall be filed with the Commissioner at least 30 days before its use.

(iii) If the insurer fails to demonstrate that the data produced under a subclassification can be reported in a manner consistent with the uniform classification system and uniform statistical plan, the Commissioner shall disapprove the subclassification.

(3) (I) AN INSURER MAY DEVELOP A TIERED RATING PLAN CONTAINING TWO OR MORE RISK TIERS TO BE APPLIED TO THE INSURER'S ACCEPTANCE OF RISKS UNDER THE UNIFORM CLASSIFICATION SYSTEM ON WHICH A RATE MAY BE MADE.

(II) A TIERED RATING PLAN UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:

1. ESTABLISH DISCRETE TIERS FOR THE ACCEPTANCE OF RISKS BASED ON DEFINED RISK ATTRIBUTES THAT:

A. ARE NOT ARBITRARY, CAPRICIOUS, OR UNFAIRLY DISCRIMINATORY; AND

B. ARE REASONABLY RELATED TO THE INSURER'S BUSINESS AND ECONOMIC PURPOSES; AND

2. REQUIRE THAT EACH INSURED BE PLACED IN THE HIGHEST QUALITY TIER FOR WHICH THAT INSURED QUALIFIES.

(III) AN INSURER SHALL FILE A TIERED RATING PLAN DEVELOPED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITH THE COMMISSIONER AT LEAST 30 DAYS BEFORE THE TIERED RATING PLAN'S USE.

(IV) IF AN INSURER FAILS TO DEMONSTRATE THAT THE DATA PRODUCED UNDER A TIERED RATING PLAN CAN BE REPORTED IN A MANNER CONSISTENT WITH THE UNIFORM CLASSIFICATION SYSTEM AND THE UNIFORM STATISTICAL PLAN, THE COMMISSIONER SHALL DISAPPROVE THE TIERED RATING PLAN.

(c) Each workers' compensation insurer shall record and report its workers' compensation experience to a rating organization as set forth in the uniform statistical plan approved by the Commissioner.

(d) (1) Subject to the approval of the Commissioner, each rating organization shall develop and file rules reasonably related to the recording and reporting of data under the uniform classification system, uniform statistical plan, and uniform experience rating plan.

(2) In writing and reporting its business, each workers' compensation insurer shall adhere to the approved rules and experience rating plan.

(3) An insurer may not agree with another insurer or rating organization to adhere to rules that are not reasonably related to the recording and reporting of data under the uniform classification system or uniform statistical plan.

(e) The experience rating plan methodology required under § 11-330(d)(4) of this subtitle shall be based on:

- (1) reasonable eligibility standards;
- (2) adequate incentives for loss prevention; and
- (3) sufficient premium differentials so as to encourage safety.

(f) (1) Except as provided in paragraphs (2) [and], (3), AND (4) of this subsection, the uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based on measurement of the loss-producing characteristics of an individual insured.

(2) In addition to any premium adjustment allowed under paragraph (1) of this subsection and pursuant to a filing made by a rating organization and approved by the Commissioner, an insurer may file a rating plan with the Commissioner that provides for prospective premium adjustments up to 25% based upon characteristics of a risk that are not reflected in the uniform experience rating plan.

(3) AN INSURER MAY FILE A RATING PLAN WITH THE COMMISSIONER THAT PROVIDES FOR PROSPECTIVE PREMIUM ADJUSTMENTS BASED ON MERIT FOR AN INSURED THAT DOES NOT MEET MINIMUM PREMIUM REQUIREMENTS TO QUALIFY FOR A UNIFORM EXPERIENCE RATING PLAN.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, in addition to any premium adjustment allowed under paragraphs (1) [and], (2), AND **(3)** of this subsection and pursuant to a filing made by a rating organization and approved by the Commissioner, an insurer may file a rating plan with the Commissioner that provides for a premium discount for appropriate classifications or subclassifications of a risk of up to 4% to an insured that has an alcohol- and drug-free workplace policy that may include one or more of the following programs:

1. an alcohol and drug testing program;
2. an employee education program on alcohol and drug abuse;

3. a supervisor education program on alcohol and drug abuse;
4. an employee assistance program that includes referrals of employees for appropriate diagnosis, treatment, and assistance;
5. a program requiring an employee who has caused or contributed to an accident while at work to undergo alcohol or drug testing; and
6. any other program that the insurer deems effective to encourage an alcohol- and drug-free workplace.

(ii) An insurer is not required to provide a premium discount under this paragraph if the insured is required under federal or State law to test its employees for drugs or otherwise provide an alcohol- and a drug-free workplace.

[(4)] (5) An insurer may file a rating plan that provides for retrospective premium adjustments based on an insured's past experience.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.

Approved by the Governor, April 18, 2017.