

HOUSE BILL 958

C4

(6lr2880)

ENROLLED BILL
— *Economic Matters/Finance* —

Introduced by **Delegate Jameson**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

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; allowing the Division to disclose certain*
15 *proprietary rate-related information to a certain consultant under certain*

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.

Italics indicate opposite chamber/conference committee amendments.



1 circumstances; requiring the Commissioner to give an insurer certain notice at a
 2 certain time before disclosing certain information under certain circumstances;
 3 authorizing an insurer to seek to have a certain disclosure made in a certain manner;
 4 providing that certain disclosures do not waive a certain privilege or claim of
 5 confidentiality of certain information; providing for the construction of certain
 6 provisions of this Act; defining a certain term; and generally relating to insurance
 7 rate filings and confidentiality.

8 BY repealing and reenacting, with amendments,
 9 Article – Insurance
 10 Section 11–307
 11 Annotated Code of Maryland
 12 (2011 Replacement Volume and 2015 Supplement)

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

15 **Article – Insurance**

16 11–307.

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

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

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

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

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

35 (i) the insurer shall notify the Commissioner that it uses rates and
 36 supplementary rate information prepared and filed with the Commissioner by a designated
 37 rating organization of which it is a member or subscriber and shall provide the

1 Commissioner with information about modifications of those rates and supplementary rate
2 information that is necessary to inform the Commissioner fully; and

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

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

8 (I) MEANS A RATING MODEL; AND

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

11 [(1)] (2) (I) [Each] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF
12 THIS SUBSECTION, EACH filing and any supporting information filed under this subtitle
13 shall be open to public inspection as soon as filed.

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

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

18 1. CONSTITUTES A TRADE SECRET AND CONFIDENTIAL
19 COMMERCIAL INFORMATION;

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

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

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

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

4 B. MAKE THE MATERIAL OPEN TO PUBLIC INSPECTION
 5 10 BUSINESS DAYS AFTER THE DATE THE COMMISSIONER GIVES NOTICE OF THE
 6 DETERMINATION TO THE INSURER.

7 2. THE COMMISSIONER MAY NOT DISCLOSE THE
 8 MATERIAL IF:

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

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

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, INCLUDING THE UNITED STATES DEPARTMENT OF JUSTICE AND THE

1 MARYLAND ATTORNEY GENERAL, IF ACTING IN A LAW ENFORCEMENT CAPACITY;
 2 OR

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

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

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

17 ~~(IV)~~ (V) THE COMMISSIONER SHALL NOTIFY THE INSURER IN
 18 WRITING AT LEAST 10 BUSINESS DAYS BEFORE THE COMMISSIONER DISCLOSES ANY
 19 OF THE INSURER'S PROPRIETARY RATE-RELATED INFORMATION UNDER
 20 SUBPARAGRAPH (III) OF THIS PARAGRAPH.

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

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

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

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.