

# SENATE BILL 839

C4

(6lr2199)

## ENROLLED BILL

— Finance/Economic Matters —

Introduced by ~~Senator Feldman~~ Senators Feldman, Middleton, Astle, Benson, Hershey, Jennings, Kelley, Klausmeier, Mathias, and Reilly

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.

\_\_\_\_\_  
President.

### 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*

---

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

9 BY repealing and reenacting, with amendments,  
 10 Article – Insurance  
 11 Section 11–307  
 12 Annotated Code of Maryland  
 13 (2011 Replacement Volume and 2015 Supplement)

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

16 **Article – Insurance**

17 11–307.

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

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

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

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

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

36 (i) the insurer shall notify the Commissioner that it uses rates and  
 37 supplementary rate information prepared and filed with the Commissioner by a designated

1 rating organization of which it is a member or subscriber and shall provide the  
2 Commissioner with information about modifications of those rates and supplementary rate  
3 information that is necessary to inform the Commissioner fully; and

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

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

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

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

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

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

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

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

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

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

27 **(II) 1. ~~IF~~ EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF**  
28 **THIS SUBPARAGRAPH, IF THE COMMISSIONER DETERMINES THAT SOME OR ALL OF**  
29 **THE MATERIAL THAT AN INSURER FILES AND IDENTIFIES AS PROPRIETARY**  
30 **RATE-RELATED INFORMATION DOES NOT CONSTITUTE PROPRIETARY**  
31 **RATE-RELATED INFORMATION AS DEFINED IN PARAGRAPH (1) OF THIS**  
32 **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 OR MEDICAL MALPRACTICE INSURANCE**  
 5 **RATE FILING, TO THE PEOPLE'S INSURANCE COUNSEL DIVISION ACTING UNDER §**  
 6 **6-306 OF THE STATE GOVERNMENT ARTICLE.**

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

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

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

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

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

31 **(4) THIS SUBSECTION MAY NOT BE CONSTRUED TO:**

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

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

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

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

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

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.