

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 958
Economic Matters

(Delegate Jameson)

Finance

Insurance - Rate Filings - Trade Secrets

This bill specifies that, for the purposes of Insurance Law, an insurer’s designated “proprietary rate-related information” that is filed with the Insurance Commissioner (1) constitutes a trade secret and confidential commercial information; (2) generally must be kept confidential by the Insurance Commissioner; and (3) is not subject to subpoena served on the Commissioner or any recipient of proprietary rate-related information authorized by the bill. The bill also specifies the type of information that an insurer may designate as proprietary and the circumstances under which the Commissioner may disclose an insurer’s proprietary rate-related information.

Fiscal Summary

State Effect: Maryland Insurance Administration (MIA) special fund revenues may increase minimally in FY 2017 due to \$125 rate and form filings fees if insurers file their rates again to designate information as proprietary. The complexity and volume of the filings that must be reviewed may necessitate additional contractual support and staff training for that year only as MIA staff adjusts to any new rate models and algorithms developed by insurers as a result of the bill; MIA special fund expenditures increase accordingly. MIA can handle any future year filings with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Proprietary rate-related information” means a rating model and includes the formulas, algorithms, analyses, and specific weights given to variables used in the model.

If the Commissioner disagrees with an insurer’s designation, the insurer must be notified, in writing, and the Commissioner must make the information open to public inspection 10 business days after the notice is given. However, the Commissioner may not disclose the information if, within that 10-day period, the insurer has not put the rate filing into effect, the filing is withdrawn, and the Commissioner is notified that the filing was withdrawn.

The Commissioner may disclose an insurer’s proprietary rate-related information (1) in furtherance of a regulatory or legal action that the Commissioner undertakes while performing his or her duties; (2) to specified entities if the recipient enters into an agreement to maintain the confidentiality of the information; or (3) if the proprietary information is part of a homeowner’s insurance rate filing, to the People’s Insurance Counsel Division, which must maintain the confidentiality of the information. In any of these situations, the insurer must be notified, in writing, at least 10 business days before the information may be disclosed and there is no waiver of any applicable privilege or claim of confidentiality with regard to the disclosed information. For information that is disclosed by the Commissioner during the course of his or her duties, an insurer may seek to have the disclosure be made under seal or other protection of confidentiality. Additionally, the People’s Insurance Counsel may disclose the information to an outside consultant that is engaged to assist the division in reviewing a homeowner’s insurance rate filing if that consultant enters into a written agreement to maintain the confidentiality of the information.

The bill may not be construed to authorize (1) an insurer to designate the rating factors used to calculate the premium as proprietary rate-related information or (2) the Commissioner to keep the rating factors confidential.

Current Law: Each insurer in the State must file with the Commissioner all rates, supplementary rate information, policy forms, and endorsements as well as all modifications of rates, supplementary rate information, policy forms, and endorsements that the insurer proposes to use. An insurer may include in a filing any additional relevant supporting information. The Commissioner may also require a filer to provide this supporting information. A filing and any supporting information is open to public inspection as soon as it is filed. Generally, a filing may not take effect until 30 working days after it is filed; however, a rate filing may take effect as soon as it has been filed with

MIA. Any filing is considered approved unless disapproved by the Commissioner in the 30-day waiting period. MIA charges a fee of \$125 per filing.

The Maryland Public Information Act (PIA) gives the public the right to access government records without unnecessary cost and delay. Generally, a custodian must grant or deny a PIA request within 30 days of receiving an application. However, a custodian of public information must deny the inspection of part of a public record if it contains a trade secret, confidential commercial or financial information, or confidential geological or geophysical information.

The People's Insurance Counsel Division within the Office of the Attorney General was established to represent consumer interests when insurance companies revise homeowner's or medical professional liability insurance rates. The division is required to evaluate matters before the Commissioner to determine whether the interests of insurance consumers are affected and review rate increases that are 10% or more. The division is also authorized to conduct investigations as it considers necessary.

Background: MIA has reported that some insurers have requested supplementary rate information to be designated as trade secret or confidential commercial information. This designation makes the information exempt from public disclosure under PIA. In August 2013, MIA posted a bulletin to all authorized property and casualty insurers and licensed rating organizations for the purposes of reminding them that Title 11 of the Insurance Article requires each rate filing and any supporting information that is filed with the Commissioner to be open to public inspection as soon as it is filed. In the bulletin, MIA expressly states that this information is required to be open to public inspection and as such, "the Insurance Administration will not grant any requests for confidentiality of a filing, in whole or in part, that contains rate or supplementary rate information necessary to develop the premium to be charged for an insurance policy."

MIA has advised that, under current practice, insurers submit rate and form filings through the System for Electronic Rate and Form Filings. In this system, underwriting standards and data are kept confidential and protected; however, no information related to rate and form filings is kept confidential. The instant a filing is submitted, it becomes available to public inspection. MIA reports that the public is free to walk in and utilize public workstations to inspect this and other public information.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 839 (Senator Feldman, *et al.* – Finance) is not identical.

Information Source(s): Maryland Insurance Administration, Office of the Attorney General, Department of Legislative Services

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