

HOUSE BILL 57

C4

2lr1208

(PRE-FILED)

By: **Delegate Washington**

Requested: November 1, 2021

Introduced and read first time: January 12, 2022

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Motor Vehicle Insurance – Rate Filings – Trade Secrets and Factors Used to**
3 **Establish Rates**

4 FOR the purpose of repealing certain confidentiality protections for proprietary
5 rate-related information; prohibiting an insurer that uses territory as a factor in
6 establishing automobile insurance rates from using more than a certain number of
7 territories; and generally relating to motor vehicle insurance.

8 BY repealing and reenacting, with amendments,

9 Article – Insurance

10 Section 11–307 and 11–319

11 Annotated Code of Maryland

12 (2017 Replacement Volume and 2021 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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 plans.

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

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

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

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

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

19 (c) (1) [In this subsection, "proprietary rate–related information":

20 (i) means a rating model; and

21 (ii) includes the formulas, algorithms, analyses, and specific weights
22 given to variables used in the model.

23 (2) (i) Except as provided in paragraph (3) of this subsection, each]
24 **EACH** filing and any supporting information filed under this subtitle shall be open to public
25 inspection as soon as filed.

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

28 [(3) (i) Information that an insurer files with the Commissioner and
29 identifies as proprietary rate–related information:

30 1. constitutes a trade secret and confidential commercial
31 information;

32 2. subject to subparagraph (ii) of this paragraph and except
33 as provided in subparagraph (iii) of this paragraph, shall be kept confidential by the
34 Commissioner; and

1 3. is not subject to subpoena served on the Commissioner or
2 any recipient of proprietary rate-related information under subparagraph (iii) of this
3 paragraph.

4 (ii) 1. Except as provided in subsubparagraph 2 of this
5 subparagraph, if the Commissioner determines that some or all of the material that an
6 insurer files and identifies as proprietary rate-related information does not constitute
7 proprietary rate-related information as defined in paragraph (1) of this subsection, the
8 Commissioner shall:

9 A. give the insurer written notice of that determination; and

10 B. make the material open to public inspection 10 business
11 days after the date the Commissioner gives notice of the determination to the insurer.

12 2. The Commissioner may not disclose the material if:

13 A. the insurer has not put the rate filing into effect; and

14 B. within the time period described in subsubparagraph 1B
15 of this subparagraph, the insurer withdraws the rate filing and notifies the Commissioner
16 that the rate filing is withdrawn.

17 (iii) This paragraph does not prohibit the Commissioner from
18 disclosing an insurer's proprietary rate-related information:

19 1. in furtherance of a regulatory or legal action that the
20 Commissioner undertakes in performing the Commissioner's duties under this article;

21 2. if the recipient enters into a written agreement to
22 maintain the confidentiality of the proprietary rate-related information, to:

23 A. an outside consultant that the Commissioner engages to
24 assist the Commissioner in reviewing the insurer's rate filing;

25 B. another state's insurance regulatory agency;

26 C. the National Association of Insurance Commissioners; or

27 D. a state or federal law enforcement authority, including the
28 United States Department of Justice and the Maryland Attorney General, if acting in a law
29 enforcement capacity; or

30 3. if the proprietary rate-related information is part of a
31 homeowner's insurance rate filing, to the People's Insurance Counsel Division acting under
32 § 6-306 of the State Government Article.

1 (iv) 1. Except as provided in subparagraph 2 of this
2 subparagraph, the People's Insurance Counsel Division shall maintain the confidentiality
3 of proprietary rate-related information disclosed to the Division under subparagraph (iii)3
4 of this paragraph.

5 2. The People's Insurance Counsel Division may disclose
6 proprietary rate-related information to an outside consultant that the Division engages to
7 assist the Division in reviewing a homeowner's insurance rate filing, provided that the
8 outside consultant enters into a written agreement to maintain the confidentiality of the
9 proprietary rate-related information.

10 (v) The Commissioner shall notify the insurer in writing at least 10
11 business days before the Commissioner discloses any of the insurer's proprietary
12 rate-related information under subparagraph (iii) of this paragraph.

13 (vi) In addition to any other rights an insurer may have under any
14 other applicable law, the insurer may seek to have any disclosure of the insurer's
15 proprietary rate-related information under subparagraph (iii)1 of this paragraph be made
16 under seal or other protection of confidentiality.

17 (vii) There is no waiver of any applicable privilege or claim of
18 confidentiality with regard to any proprietary rate-related information that is disclosed
19 under subparagraph (iii) of this paragraph.

20 (4) This subsection may not be construed to:

21 (i) authorize an insurer to designate the rating factors used to
22 calculate the premium as proprietary rate-related information; or

23 (ii) authorize the Commissioner to keep the rating factors
24 confidential.]

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

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

30 11-319.

31 **(A) AN INSURER THAT USES TERRITORY AS A FACTOR IN ESTABLISHING**
32 **AUTOMOBILE INSURANCE RATES MAY NOT USE MORE THAN FIVE TERRITORIES.**

33 **(B)** An insurer that uses territory as a factor in establishing automobile insurance
34 rates shall submit a statement to the Commissioner certifying that:

1 (1) the territories used by the insurer have been reviewed within the
2 previous 3 years; [and]

3 (2) use of the territories is actuarially justified; AND

4 **(3) THE INSURER DID NOT USE MORE THAN FIVE TERRITORIES.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
6 policies of motor vehicle insurance offered, issued, or delivered in the State on or after
7 January 1, 2023.

8 SECTION 3. AND BE IT FURTHER ENACTED, That, this Act shall take effect
9 October 1, 2022.