SENATE BILL 805

C4 1lr2821
CF HB 1251

By: **Senator Peters**
Introduced and read first time: February 9, 2021
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Motor Vehicle Insurance – Rate Filings – Discrimination, Trade Secrets, and States of Emergency

FOR the purpose of authorizing the Maryland Insurance Commissioner to require an insurer to reduce certain rates for certain private passenger motor vehicle insurance policies and file certain changes and amendments or rates under certain circumstances; repealing certain confidentiality protections for certain proprietary rate–related information; exempting private passenger motor vehicle insurance policies from certain provisions of law governing the use of territory as a factor in establishing certain motor vehicle insurance rates; prohibiting an insurer, with respect to private passenger motor vehicle insurance, from refusing to underwrite, canceling, refusing to renew, rating a risk, or increasing a renewal premium based wholly or partly on the territory of the insured or applicant; requiring the Commissioner to require all insurers to reduce the rates of all private passenger motor vehicle insurance policies in accordance with a certain provision of this Act under certain circumstances; making a conforming change; providing for the application of certain provisions of this Act; providing for the effective dates of this Act; and generally relating to motor vehicle insurance.

BY adding to
Article – Insurance
Section 11–320
Annotated Code of Maryland
(2017 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 11–216, 11–307, 11–319, and 27–501(e–2)
Annotated Code of Maryland
(2017 Replacement Volume and 2020 Supplement)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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

Article – Insurance

11–320.

IF THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY BY EXECUTIVE ORDER OR PROCLAMATION UNDER § 14–107 OF THE PUBLIC SAFETY ARTICLE, THE COMMISSIONER MAY REQUIRE AN INSURER THAT ISSUES PRIVATE PASSENGER MOTOR VEHICLE INSURANCE POLICIES TO:

(1) REDUCE THE RATES FOR THE POLICIES; AND

(2) FILE THE CHANGES AND AMENDMENTS OF RATES.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Insurance

11–216.

(A) THIS SECTION DOES NOT APPLY TO PRIVATE PASSENGER MOTOR VEHICLE INSURANCE.

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

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

(2) use of the territories is actuarially justified.

11–307.

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

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

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

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

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

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

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

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

(i) means a rating model; and

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

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

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

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

1. constitutes a trade secret and confidential commercial information;

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

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

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

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

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

2. The Commissioner may not disclose the material if:

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

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

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

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

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

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

B. another state's insurance regulatory agency;

C. the National Association of Insurance Commissioners; or

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

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

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

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

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

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

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

(4) This subsection may not be construed to:

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

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

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

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

11–319.

(A) THIS SECTION DOES NOT APPLY TO PRIVATE PASSENGER MOTOR VEHICLE INSURANCE.

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

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

(2) use of the territories is actuarially justified.

27–501.

(e–2) (1) In this subsection, "credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of determining personal lines insurance premiums or eligibility for coverage.

(2) With respect to homeowner's insurance, an insurer may not:

(i) refuse to underwrite, cancel, or refuse to renew a risk based, in whole or in part, on the credit history of an applicant or insured;

(ii) rate a risk based, in whole or in part, on the credit history of an applicant or insured in any manner, including:

1. the provision or removal of a discount;

2. assigning the insured or applicant to a rating tier; or

3. placing an insured or applicant with an affiliated company; or

(iii) require a particular payment plan based, in whole or in part, on the credit history of the insured or applicant.

(3) (i) With respect to private passenger motor vehicle insurance, an insurer may not:

1. refuse to underwrite, cancel, refuse to renew, or increase the renewal premium based, in whole or in part, on the credit history of the insured or applicant; or

2. require a particular payment plan based, in whole or in part, on the credit history of the insured or applicant.

(ii) 1. An insurer may, subject to paragraphs (4) and (5) of this subsection, use the credit history of an applicant to rate a new policy of private passenger motor vehicle insurance.

2. For purposes of this subsection, rating includes:

A. the provision or removal of a discount;

B. assigning the applicant to a rating tier; or

C. placing an applicant with an affiliated company.

(4) With respect to private passenger motor vehicle insurance, an insurer that rates a new policy based, in whole or in part, on the credit history of the applicant:

(i) may not use a factor on the credit history of the applicant that occurred more than 5 years prior to the issuance of the new policy;

(ii) 1. shall advise an applicant at the time of application that credit history is used; and

2. shall, on request of the applicant, provide a premium quotation that separately identifies the portion of the premium attributable to the applicant's credit history;

(iii) may not use the following factors in rating the policy:

1. the absence of credit history or the inability to determine the applicant's credit history; or

2. the number of credit inquiries about an applicant's credit history;

(iv) 1. shall review the credit history of an insured who was adversely impacted by the use of the insured's credit history at the initial rating of the policy:

A. every 2 years; or

B. on request of the insured; and

2. shall adjust the premium of an insured whose credit history was reviewed under this subparagraph to reflect any improvement in the insured's credit history; or

(v) shall disclose to the applicant at the time of the issuance of a policy that the insurer is required to:

1. review the credit history of an insured who was adversely impacted by the use of the insured's credit history at the initial rating or underwriting of the policy:

A. every 2 years; or

B. on request of the insured; and

2. adjust the premium of an insured whose credit history was reviewed to reflect any improvement in the insured's credit history.

(5) With respect to private passenger motor vehicle insurance, an insurer that rates a new policy based, in whole or in part, on the credit history of the applicant may, if actuarially justified, provide a discount of up to 40% or impose a surcharge of up to 40%.

(6) With respect to private passenger motor vehicle insurance, an insurer may not increase the premium for an insured who becomes a surviving spouse based solely on the insured's change in marital status.

(7) With respect to homeowner's insurance, an insurer may not increase the premium for an insured who becomes a surviving spouse based solely on the insured's change in marital status.

(8) (i) At the time a policy of private passenger motor vehicle insurance is initially issued, an insurer may consider the applicant's homeowner's insurance claim history when rating the policy.

(ii) At renewal, an insurer may not increase the premium for a policy of private passenger motor vehicle insurance based on a homeowner's insurance claim.

(9) (i) At the time a policy of homeowner's insurance is initially issued, an insurer may consider the applicant's motor vehicle claim history when rating the policy.

(ii) At renewal, an insurer may not increase the premium for a policy of homeowner's insurance based on a private passenger motor vehicle insurance claim.

(10) WITH RESPECT TO PRIVATE PASSENGER MOTOR VEHICLE INSURANCE, AN INSURER MAY NOT REFUSE TO UNDERWRITE, CANCEL, REFUSE TO RENEW, RATE A RISK, OR INCREASE THE RENEWAL PREMIUM BASED WHOLLY OR PARTLY ON THE TERRITORY OF THE INSURED OR APPLICANT.

SECTION 3. AND BE IT FURTHER ENACTED, That, if the Declaration of State of Emergency and Existence of Catastrophic Health Emergency by the Governor for COVID–19 is renewed after the effective date of this Act but before August 1, 2021, the Maryland Insurance Commissioner shall require all insurers to reduce the rates of all private passenger motor vehicle insurance policies in accordance with § 11–320 of the Insurance Article, as enacted by Section 1 of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2021, and shall apply to all policies of motor vehicle insurance offered, issued, or delivered in the State on or after January 1, 2022.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2021.