

# SENATE BILL 805

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CF HB 1251

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By: **Senator Peters**

Introduced and read first time: February 9, 2021

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

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

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

19 BY adding to

20 Article – Insurance

21 Section 11–320

22 Annotated Code of Maryland

23 (2017 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Insurance

26 Section 11–216, 11–307, 11–319, and 27–501(e–2)

27 Annotated Code of Maryland

28 (2017 Replacement Volume and 2020 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Insurance**

4 **11–320.**

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

9 **(1) REDUCE THE RATES FOR THE POLICIES; AND**

10 **(2) FILE THE CHANGES AND AMENDMENTS OF RATES.**

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

13 **Article – Insurance**

14 **11–216.**

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

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

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

21 **(2) use of the territories is actuarially justified.**

22 **11–307.**

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

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

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

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

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

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

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

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

19 (i) means a rating model; and

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

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

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

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

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

31 2. subject to subparagraph (ii) of this paragraph and except  
32 as provided in subparagraph (iii) of this paragraph, shall be kept confidential by the  
33 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) THIS SECTION DOES NOT APPLY TO PRIVATE PASSENGER MOTOR**  
32 **VEHICLE INSURANCE.**

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.

4 27-501.

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

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

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

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

15 1. the provision or removal of a discount;

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

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

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

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

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

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

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

31 2. For purposes of this subsection, rating includes:

- 1 A. the provision or removal of a discount;
- 2 B. assigning the applicant to a rating tier; or
- 3 C. placing an applicant with an affiliated company.

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

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

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

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

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

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

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

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

21 A. every 2 years; or

22 B. on request of the insured; and

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

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

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

31 A. every 2 years; or

1 B. on request of the insured; and

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

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

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

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

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

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

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

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

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

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

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



1           SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section  
2 4 of this Act, this Act shall take effect July 1, 2021.