

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2143
(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

AN ACT to create and enact section 26.1-37-04.1 of the North Dakota Century Code, relating to credit insurance; to amend and reenact sections 26.1-37-01, 26.1-37-02, 26.1-37-03, 26.1-37-05, 26.1-37-06, 26.1-37-07, 26.1-37-08, 26.1-37-09, 26.1-37-13, and 26.1-37-14 of the North Dakota Century Code, relating to credit insurance; and to repeal sections 26.1-37-04, 26.1-37-10, 26.1-37-11, and 26.1-37-12 of the North Dakota Century Code, relating to credit insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-37-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-01. Scope and construction.

1. This chapter may be cited as the "Consumer Credit Insurance Model Act".
2. All life insurance and all accident and health consumer credit insurance issued or sold in connection with loans or other credit transactions are for personal, family, or household purposes is subject to the provisions of this chapter, except such insurance:
 - a. Insurance written in connection with a loan or other credit transaction of more than twenty years' duration, and except where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. This chapter must be liberally construed that is:
 - (1) Secured by a first mortgage or deed of trust;
 - (2) Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose;
 - b. Transactions involving extensions of credit primarily for business or commercial purposes;
 - c. Insurance on motor vehicles designed for highway use and on mobile homes;
 - d. Creditor-placed insurance;
 - e. Insurance sold as an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor;
 - f. Insurance for which no identifiable charge is made to the debtor; and
 - g. Insurance on accounts receivable.

SECTION 2. AMENDMENT. Section 26.1-37-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-02. Definitions. For the purpose of this chapter:

1. "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.

2. "Collateral" means personal property that is pledged as security for the satisfaction of a debt.
3. "Consumer credit insurance" is a general term used in this chapter to refer to any or all of credit life insurance, credit accident and health insurance, credit unemployment insurance, credit property, or any other credit insurance.
4. "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.
5. "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.
- 2- 6. "Credit life insurance" means insurance on ~~the life of~~ a debtor or debtors, pursuant to or in connection with a specific loan or other credit transaction, to provide for satisfaction of a debt, in whole or in part, upon the death of an insured debtor.
- 3- 7. "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of the lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them, or any other person in any way associated with any of them.
8. "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense, or damage to the collateralized personal property as a result of fire, theft, collision, or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by dual interest insurance. It is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required physical damage insurance, with the cost of the coverage being charged to the debtor. It is either single interest insurance or limited dual interest insurance.
9. "Credit property insurance" means any policy, endorsement, rider, binder, certificate, or other instrument or evidence of insurance covering perils to goods purchased through a credit transaction or used as collateral for a credit transaction and which concerns a creditor's interest in the purchased goods or pledged collateral either in whole or in part.
10. "Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date or dates.
11. "Credit unemployment insurance" means insurance on a debtor to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined in the policy.
- 4- 12. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.
- 5- ~~"Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.~~
13. "Dual interest insurance" means credit property insurance covering the seller's or creditor's interest and at least partially the borrower's interest in the goods purchased through the credit transaction or pledged as collateral for the credit transaction.
14. "Finance charge" means any charge payable directly or indirectly as an incident to or as a condition of the extension of credit, including interest; time price differentials; amount payable under a discount system of additional charges; service, transaction, or carrying charges; loan fees; points or similar charges; appraisal fees; or charges incurred for

investigating the credit worthiness of the consumer. The terms do not include charges as a result of default, taxes, license fees, delinquency charges, or filing fees.

15. "Gross debt" means the sum of the remaining payments owed to the creditor by the debtor.
16. "Identifiable charge" means a charge for a type of consumer credit insurance that is made to debtors having such insurance and not made to debtors not having such insurance, and includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor which sets out the financial elements of the credit transaction and any difference in the finance, interest, service, or other similar charge made to debtors who are in like circumstances except for the insured or noninsured status of the debtor or of the property used as security for the credit transaction.
17. "Net debt" means the amount necessary to liquidate the remaining debt in a single lump sum payment, excluding all unearned interest and other unearned finance charges.
18. "Open-end credit" means credit extended by a creditor under an agreement in which:
 - a. The creditor reasonably contemplates repeated transactions;
 - b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and
 - c. The amount of credit that may be extended to the debtor during the term of the agreement, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

SECTION 3. AMENDMENT. Section 26.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-03. Issuance of policies and certificates. ~~All credit life insurance and credit accident and health insurance policies~~ subject to this chapter may be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein, and may be issued only through holders of licenses or authorizations issued by the commissioner.

SECTION 4. Section 26.1-37-04.1 of the North Dakota Century Code is created and enacted as follows:

26.1-37-04.1. Types of consumer credit insurance. The types of consumer credit insurance defined in section 26.1-37-02 may each be written separately or in combination with other types of consumer credit insurance on an individual policy or group policy basis. The commissioner may by rule prohibit or limit any combination.

SECTION 5. AMENDMENT. Section 26.1-37-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-05. Amount of consumer credit life insurance ~~and credit accident and health insurance.~~

1. a. Except as otherwise provided in this subsection, the initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness and, ~~where~~ when an indebtedness is repayable in substantially equal installments, the amount of insurance may not exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Insurance on agricultural ~~credit transaction~~ loan commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment, on a nondecreasing or level term plan. Insurance on educational ~~credit transaction~~ loan commitments may be written for ~~the amount of the portion of such commitment that has not been advanced by the creditor~~ unpaid indebtedness plus any unused commitment.

- b. In the absence of any preexisting condition exclusions, the amount of insurance payable in the event of death due to natural causes may be limited to the balance as the balance existed six months before the date of death if:
 - (1) There has been one increase or more in the outstanding balance during the six-month period, other than those due to the accrual of interest or late charges; and
 - (2) Evidence of individual insurability has not been required during the six-month period.
- c. Other patterns of insurance may be used which are not inconsistent with this subsection including those providing coverage for lease payments or lump sum purchase at the end of the lease.
- 2. a. The total amount of periodic indemnity payable by credit accident and health insurance or by credit unemployment insurance in the event of disability or unemployment, as defined in the policy, may not exceed the aggregate of the periodic scheduled unpaid installments of the ~~indebtedness~~ gross debt; and the amount of each periodic indemnity payment may not exceed the original ~~indebtedness~~ gross debt divided by the number of periodic installments.
- b. Notwithstanding subdivision a, for credit accident and health insurance or for credit unemployment insurance written in connection with an open-end credit agreement, the amount of insurance may not exceed the gross debt which would accrue on that amount using the periodic indemnity. Subject to any policy maximums, the periodic indemnity may not be less than the creditor's minimum repayment schedule.
- 3. a. For credit property insurance sold in conjunction with a closed-end transaction, an insurer may not issue credit property insurance coverage unless the amount financed exceeds three hundred dollars.
- b. For credit property insurance sold in conjunction with a closed-end transaction, the amount of credit property insurance may not exceed the underlying credit transaction.

SECTION 6. AMENDMENT. Section 26.1-37-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-06. Term of consumer credit life insurance and ~~credit accident and health insurance.~~ The

- 1. Effective date of coverage:
 - a. For consumer credit insurance made available to and elected by the debtor before or contemporaneous with a credit transaction to which the insurance relates, the term of any credit life ~~the insurance or credit accident and health insurance~~, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor, except that ~~where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness commences on the effective date of the policy.~~ Where when evidence of individual insurability is required and the evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the credit insurance may commence on the date on which the insurer determines the evidence to be satisfactory, ~~and in that event there must be an appropriate refund or adjustment of any charge to the debtor for insurance.~~ If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund must be paid or credited as provided in section ~~26.1-37-08.~~

- b. For insurance coverage made available to and elected by the debtor on a date subsequent to the date of the consumer credit transaction to which the insurance relates, the insurance, subject to acceptance by the insurer, commences on a date not earlier than the date the election is made by the debtor nor later than thirty days following the date on which the insurance company accepts the risk for coverage, according to an objective method such as one related to a particular date within a billing or repayment cycle or a calendar month.
 - c. Notwithstanding the provisions of subdivisions a and b, when a group policy provides coverage with respect to debts existing on the policy effective date, the insurance relating to the debt shall not commence before the effective date of the group policy.
 - d. A charge for insurance may not be made to the debtor and retained by the creditor or insurer for any time prior to commencement of the consumer credit insurance to which the charge is related.
2. Termination date of coverage:
- a. The term of any consumer credit insurance may not extend beyond the termination date specified in the policy. The termination date of insurance may precede, coincide with, or follow the scheduled maturity date of the debt to which it relates, subject to any other requirements and restrictions of this chapter.
 - b. The term of any consumer credit insurance may not extend more than fifteen days beyond the scheduled maturity date of the debt except when extended without additional cost to the debtor or except when extended pursuant to a written agreement, signed by the debtor, in connection with a variable interest rate credit transaction or a deferral, renewal, refinancing, or consolidation of debt.
 - c. If the debt is discharged due to renewal, refinancing, or consolidation prior to the scheduled termination date of the insurance, any insurance in force must be terminated before any new insurance may be written in connection with the renewed, refinanced, or consolidated debt.
 - d. In all cases of termination of insurance prior to the scheduled termination of the insurance, an appropriate refund or credit to the debtor must be made of any unearned insurance charge paid by the debtor for a term of insurance after the date of the termination, except that a refund is not required of a charge made for insurance if the insurance is terminated by performance of the insurer's obligation with respect to the insurance.
 - e. An insured debtor may terminate consumer credit insurance at any time by providing advance request to the insurer. The individual policy or group certificate may require that the request be in writing or that the debtor surrender the individual policy or group certificate or both. The debtor's right to terminate coverage may also be subject to the terms of the credit transaction contract.

SECTION 7. AMENDMENT. Section 26.1-37-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-07. Provisions of policies and certificates of insurance - Disclosure to debtors.

- 1. Before the debtor elects to purchase consumer credit insurance in connection with a credit transaction, the following must be disclosed to the debtor in writing:
 - a. That the purchase of consumer credit insurance is optional and not a condition of obtaining credit approval.
 - b. If more than one kind of consumer credit insurance is being made available to the debtor, whether the debtor can purchase each kind separately or the multiple coverages only as a package.

- c. The conditions of eligibility, if any.
 - d. That if the consumer has other insurance that covers the risk, the consumer may not want or need credit insurance.
 - e. That within the first thirty days after receiving the individual policy or group certificate, the debtor may cancel the coverage and have all premiums paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any of the unearned premium. However, only in those instances where insurance is a requirement for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation.
 - f. A brief description of the coverage, including a description of the amount, the term, any exceptions, limitations, and exclusions, the insured event, any waiting or elimination period, any deductible, any applicable waiver of premium provision, to whom the benefits would be paid, and the premium rate for each coverage or for all coverages in a package.
 - g. That if the premium or insurance charge is financed, it will be subject to finance charges at the rate applicable to the credit transaction.
2. The disclosures in subsection 1 must be provided in the following manner:
- a. In connection with consumer credit insurance offered contemporaneously with the extension of credit or offered through direct mail advertisements, disclosure must be made in writing and presented to the consumer in a clear and conspicuous manner.
 - b. In conjunction with the offer of credit insurance subsequent to the extension of credit by other than direct mail advertisements, disclosure may be provided orally so long as written disclosures are provided to the debtor no later than the earlier of:
 - (1) Ten days after the election of coverage; or
 - (2) The date any other written material is provided to the debtor.
3. All consumer credit life insurance and credit accident and health insurance must be evidenced by an individual policy; or in the case of a group insurance by a certificate of insurance which must be delivered to the debtor.
2. 4. Each The individual policy or group certificate of credit life insurance or credit accident and health insurance must, in addition to other requirements of law, set forth the following:
- a. The name and home-office address of the insurer; ~~the~~;
 - b. The name or names of the debtor or debtors or in the case of a group certificate ~~under a group policy~~, the identity by name or otherwise of the debtor or debtors ~~;~~ ~~the~~;
 - c. The premium or amount of payment, ~~if any~~, by the debtor separately for credit life insurance and credit accident and health insurance, ~~a~~ each kind of coverage or for all coverages in a package, except that for open-end loans, the premium rate and the balance to which the premium rate applies;
 - d. A full description of the coverage or coverages including the amount and term thereof, and any exceptions, limitations, and ~~restrictions~~, and ~~must state~~ exclusions;
 - e. A statement that the benefits will be paid to the creditor to reduce or extinguish the unpaid indebtedness debt or to repair or replace the property and, wherever the amount of insurance benefit exceeds the unpaid indebtedness, ~~debt~~ that any excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate; ~~and~~

- f. If the scheduled term of insurance is less than the scheduled term of the credit transaction, a statement to that effect on the face of the individual policy or group certificate in not less than ten-point bold face type.
- ~~3. The individual policy or group certificate of insurance must be delivered to the insured at the time the indebtedness is incurred except as provided in subsection 4.~~
4. 5. If Unless the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness debt is incurred, or at such other time that the debtor elects to purchase coverage, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home-office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor, if any, separately for credit life the insurance and credit accident and health insurance, the amount, term, and a brief description of the coverage provided, must be delivered to the debtor at the time the indebtedness debt is incurred or the election to purchase coverage is made. The copy of the application or notice of proposed insurance must also refer exclusively to insurance coverage, and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement, unless the information required by this subsection is prominently set forth in that material. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness debt is incurred or the election to purchase coverage is made, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance must state that upon acceptance by the insurer, the insurance becomes effective as provided in section 26.1-37-06.
6. The application, notice of proposed insurance, or certificate may be used to fulfill all of the requirements of subsections 1 and 4 if it contains all of the information required by those subsections.
7. The debtor has thirty days from the date the debtor receives either the individual policy or the group certificate to review the coverage purchased. At any time within the thirty-day period, the debtor may contact the creditor or insurer issuing the policy or certificate and request that the coverage be canceled. The individual policy or group certificate may require the request to be in writing or that the policy or certificate be returned to the insurer, or both. The debtor must, within thirty days of the request, receive a full refund or credit of all premiums or insurance charges paid by the debtor.
8. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home-office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund must be made within thirty days. If no insurer accepts the risk, then all premiums paid must be refunded or credited within thirty days of application to the person entitled thereto.
9. For the purpose of subsection 5, an individual policy or group certificate delivered in conjunction with an open-end consumer credit agreement or any consumer credit insurance requested by the debtor after the date of the debt must be deemed to be delivered at the time the debt is incurred or election to purchase coverage is made if the delivery occurs within thirty days of the date the insurance is effective.
10. An individual policy or group certificate delivered in conjunction with an open-end credit agreement continues from its effective date through the term of the agreement unless the individual policy or group certificate is terminated in accordance with its terms at an earlier date.
11. Credit property insurance coverage, at a minimum, must include the coverages in the standard fire policy with coverage attachment and extended coverage endorsement and must cover a substantial risk of loss of or damage to the property related to the credit transaction.

SECTION 8. AMENDMENT. Section 26.1-37-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-08. Premiums and refunds.

1. An insurer may revise its schedules of premium rates from time to time and shall file the revised schedules with the commissioner. No insurer may issue any consumer credit life insurance policy or credit accident and health insurance policy or group certificate for which the premium rate exceeds that determined by the schedules of the insurer as on file with the commissioner. The commissioner may adopt rules to assure that the premium rates are reasonable in relation to the benefits provided.
2. Each individual policy or group certificate must provide ~~that~~ for a refund in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any insurance and upon notice to the insurer. The refund of an amount paid by the debtor for insurance must be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than the minimum need be made. Refund formulas which an insurer desires to use must develop refunds that are at least as favorable to the debtor as refunds equal to the premium cost of scheduled benefits subsequent to the date of cancellation or termination, computed at the schedule of premium rates in effect on the date of issue. The formula to be used in computing the refund must be filed with and approved by the commissioner.
3. If a creditor requires a debtor to make any payment for ~~consumer credit life insurance or credit accident and health~~ insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.
4. The amount charged to a debtor for any ~~consumer credit life or credit health and accident~~ insurance may not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.
5. This chapter does not authorize any payments for insurance prohibited under any law or rule governing credit transactions.

SECTION 9. AMENDMENT. Section 26.1-37-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-09. Applicability of credit life and health policy simplification standards.

1. ~~Except as provided in subsection 3, sections 26.1-37-09 through 26.1-37-12 apply to all~~ All individual and group credit life insurance and credit accident and health insurance policies and insurance certificates under group credit life and accident and health insurance policies filed after June 30, 1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless the policy form has been approved by the commissioner or is permitted to be issued under sections 26.1-37-09 through 26.1-37-12. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections 26.1-37-09 through 26.1-37-12 need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection 6 of section 26.1-37-10 must comply with sections 26.1-33-29 through 26.1-33-32 and 26.1-36-13 through 26.1-36-16, respectively.
2. ~~The commissioner may extend the dates in subsection 1.~~
3. ~~Sections 26.1-37-09 through 26.1-37-12 do not apply to:~~
 - a. ~~Any policy that is a security subject to federal jurisdiction.~~

- b. ~~Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates the form must be approved under sections 26.1-37-09 through 26.1-37-12.~~
 - e. ~~The renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under sections 26.1-37-09 through 26.1-37-12.~~
4. ~~No other state law setting language simplification standards applies to policy form.~~

SECTION 10. AMENDMENT. Section 26.1-37-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-13. Claims.

1. All claims must be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims must be settled as soon as possible and in accordance with the terms of the insurance contract.
2. All claims must be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to one specified.
3. No plan or arrangement may be used whereby any person, firm, or corporation other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts ~~or~~, checks, or electronic transfers in payment of claims due to the group policyholder subject to audit and review by the insurer.

SECTION 11. AMENDMENT. Section 26.1-37-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-14. Existing insurance - Choice of insurer. When consumer credit life insurance ~~or credit accident and health insurance~~ is required as additional security for any indebtedness debt, the debtor shall, upon request to the creditor, has have the option of furnishing the required amount of insurance through existing insurance policies owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state.

SECTION 12. REPEAL. Sections 26.1-37-04, 26.1-37-10, 26.1-37-11, and 26.1-37-12 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2143.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 95 Nays 2 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State