

Introduced by

Representatives Koppelman, Grosz, N. Johnson

Senators Every, Klein, Krebsbach

1 A BILL for an Act to create and enact chapter 26.1-25.1 of the North Dakota Century Code,
2 relating to use of credit information in personal insurance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 26.1-25.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **26.1-25.1-01. Scope.** This chapter applies to personal insurance and does not apply to
7 commercial insurance.

8 **26.1-25.1-02. Definitions.** As used in this chapter, unless the context otherwise
9 requires:

- 10 1. "Adverse action" means a denial or cancellation of, an increase in any charge for,
11 or a reduction or other adverse or unfavorable change in the terms of coverage or
12 amount of, any insurance, existing or applied for, in connection with the
13 underwriting of personal insurance.
- 14 2. "Affiliate" means any company that controls, is controlled by, or is under common
15 control with another company.
- 16 3. "Applicant" means an individual who has applied to be covered by a personal
17 insurance policy with an insurer.
- 18 4. "Consumer" means an insured whose credit information is used or whose
19 insurance score is calculated in the underwriting or rating of a personal insurance
20 policy or an applicant for such a policy.
- 21 5. "Consumer reporting agency" means any person that for monetary fees, dues, or
22 on a cooperative nonprofit basis, regularly engages in whole or in part in the
23 practice of assembling or evaluating consumer credit information or other

1 information on consumers for the purpose of furnishing consumer reports to third
2 parties.

3 6. "Credit information" means any credit-related information derived from a credit
4 report, found on a credit report itself, or provided on an application for personal
5 insurance. The term does not include information that is not credit related,
6 regardless of whether the information is contained in a credit report or in an
7 application or is used to calculate an insurance score.

8 7. "Credit report" means any written, oral, or other communication of information by a
9 consumer reporting agency bearing on a consumer's creditworthiness, credit
10 standing, or credit capacity which is used or expected to be used or collected in
11 whole or in part for the purpose of serving as a factor to determine personal
12 insurance premiums, eligibility for coverage, or tier placement.

13 8. "Insurance score" means a number or rating that is derived from an algorithm, a
14 computer application, a model, or other process that is based in whole or in part on
15 credit information for the purposes of predicting the future insurance loss exposure
16 of an individual applicant or insured.

17 9. "Personal insurance" means private passenger automobile, homeowners,
18 motorcycle, mobile homeowners, condominium owners, tenants, and
19 noncommercial dwelling fire insurance policies. Such policies must be individually
20 underwritten for personal, family, or household use. No other type of insurance is
21 included as personal insurance for the purpose of this chapter.

22 10. "Tier" means a category into which insureds with substantially similar insuring risk
23 or exposure factors and expense elements are placed for purposes of determining
24 rate or premium within a single insurer or placement between insurers within an
25 affiliated group of insurers.

26 **26.1-25.1-03. Use of credit information.**

27 1. An insurer authorized to do business in this state which uses credit information to
28 underwrite or rate risks may not:

29 a. Use an insurance score that is calculated using income, gender, address, zip
30 code, ethnic group, religion, marital status, age, occupation, or nationality of
31 the consumer as a factor.

- 1 b. Deny, cancel, or nonrenew a policy of personal insurance solely on the basis
2 of credit information, without consideration of any other applicable
3 underwriting factor independent of credit information and not expressly
4 prohibited by this subsection.
- 5 c. Base an insured's renewal rates for personal insurance solely upon credit
6 information, without consideration of any other applicable factor independent
7 of credit information.
- 8 d. Take an adverse action against a consumer solely because the consumer
9 does not have a credit card account or in the absence of a credit report,
10 without consideration of any other applicable factor independent of credit
11 information.
- 12 e. Consider an inability to calculate an insurance score in underwriting or rating
13 personal insurance unless the insurer does one of the following:
- 14 (1) Treats the consumer as otherwise approved by the insurance
15 commissioner if the insurer presents information that the inability to
16 calculate a score relates to increased risk for the insurer.
- 17 (2) Treats the consumer as if the applicant or insured had neutral credit
18 information, as defined by the insurer.
- 19 (3) Excludes the use of credit information as a factor and use only other
20 underwriting criteria.
- 21 f. Take an adverse action against a consumer based on credit information,
22 unless an insurer obtains and uses a credit report issued or an insurance
23 score calculated within ninety days from the date the policy is first written or
24 renewal is issued.
- 25 g. Use credit information unless not later than every thirty-six months following
26 the last time that the insurer obtained current credit information for the
27 insured, the insurer recalculates the insurance score, or obtains an updated
28 credit report. Notwithstanding this subsection:
- 29 (1) At annual renewal, upon the request of a consumer or the consumer's
30 agent, the insurer shall reunderwrite and rerate the policy based upon a
31 current credit report or insurance score. An insurer need not

- 1 recalculate the insurance score or obtain the updated credit report of a
2 consumer more frequently than once in a twelve-month period.
- 3 (2) The insurer may obtain current credit information upon any renewal
4 before the thirty-six months if consistent with the insurer's underwriting
5 guidelines.
- 6 (3) An insurer need not obtain current credit information for an insured,
7 despite the requirements of paragraph 1, if one of the following applies:
- 8 (a) The insurer is treating the consumer as otherwise approved by
9 the commissioner.
- 10 (b) The insured is in the most favorably priced tier of the insurer,
11 within a group of affiliated insurers. However, the insurer may
12 order such report if consistent with the insurer's underwriting
13 guidelines.
- 14 (c) Credit was not used for underwriting or rating such insured when
15 the policy was initially written. However, the insurer may use
16 credit for such insured upon renewal if consistent with the
17 insurer's underwriting guidelines.
- 18 (d) The insurer reevaluates the insured beginning no later than
19 thirty-six months after inception and thereafter based upon other
20 underwriting or rating factors, excluding credit information.
- 21 h. Use the following as a negative factor in any insurance scoring methodology
22 or in reviewing credit information for the purpose of underwriting or rating a
23 policy of personal insurance:
- 24 (1) Credit inquiries not initiated by the consumer or inquiries requested by
25 the consumer for the consumer's own credit information.
- 26 (2) Inquiries relating to insurance coverage if so identified on a consumer's
27 credit report.
- 28 (3) Collection accounts with a medical industry code if so identified on the
29 consumer's credit report.
- 30 (4) Multiple lender inquires, if coded by the consumer reporting agency on
31 the consumer's credit report as being from the home mortgage industry

1 and made within thirty days of one another, unless only one inquiry is
2 considered.

3 (5) Multiple lender inquiries, if coded by the consumer reporting agency on
4 the consumer's credit report as being from the automobile lending
5 industry and made within thirty days of one another, unless only one
6 inquiry is considered.

7 i. Use an insurance score to determine an applicant or named insured's
8 eligibility for a particular payment plan. This does not prevent a company
9 from using an insured's previous payment history with the company to
10 determine eligibility for a particular payment plan.

11 2. This section does not preclude a company from rejecting an applicant or
12 terminating coverage within the first sixty days as otherwise allowed in title 26.1.

13 **26.1-25.1-04. Dispute resolution and error correction.** If it is determine through the
14 dispute resolution process set forth in the federal Fair Credit Reporting Act [Pub. L. 90-321;
15 15 U.S.C. 1681i(a)(5)] that the credit information of a current insured was incorrect or
16 incomplete and if the insurer receives notice of such determination from either the consumer
17 reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer
18 within thirty days of receiving the notice. After reunderwriting or rerating the insured, the insurer
19 shall make any adjustments necessary, consistent with the insurer's underwriting and rating
20 guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall
21 refund to the insured the amount of overpayment calculated back to the shorter of either the last
22 twelve months of coverage or the actual policy period.

23 **26.1-25.1-05. Initial notification.**

24 1. If an insurer writing personal insurance uses credit information in underwriting or
25 rating a consumer, the insurer or the insurer's agent shall disclose, either on the
26 insurance application or at the time the insurance application is taken, that the
27 insurer or the insurer's agent may obtain credit information in connection with such
28 application. Such disclosure must be either written or provided to an application in
29 the same medium as the application for insurance. The insurer or the insurer's
30 agent need not provide the disclosure statement required under this section to any

1 insured on a renewal policy if such consumer has previously been provided a
2 disclosure statement.

3 2. Use of the following example disclosure statement constitutes compliance with this
4 section: "In connection with this application for insurance, we may review your
5 credit report or obtain or use a credit-based insurance score based on the
6 information contained in that credit report. We may use a third party in connection
7 with the development of your insurance score."

8 **26.1-25.1-06. Adverse action notification.** If an insurer takes an adverse action
9 based upon credit information, the insurer must meet the notice requirements of this section.

10 The insurer shall:

11 1. Provide notification to the consumer that an adverse action has been taken, in
12 accordance with the requirements of the federal Fair Credit Reporting Act [Pub. L.
13 90-321; 15 U.S.C. 1681m(a)]; and

14 2. Provide notification to the consumer explaining the reason for the adverse action.
15 The reasons must be provided in sufficiently clear and specific language so that a
16 person can identify the basis for the insurer's decision to take an adverse action.
17 The notification must include a description of up to four factors that were the
18 primary influences of the adverse action. The use of generalized terms such as
19 "poor credit history", "poor credit rating", or "poor insurance score" does not meet
20 the explanation requirements of this subsection. Standardized credit explanations
21 provided by consumer reporting agencies or other third-party vendors are deemed
22 to comply with this section.

23 **26.1-25.1-07. Filing.**

24 1. An insurer that uses insurance scores to underwrite or rate risks shall file the
25 insurer's scoring models or other scoring processes with the insurance department.
26 A third party may file scoring models on behalf of an insurer. A filing that includes
27 insurance scoring must include loss experience justifying the use of credit
28 information.

29 2. Any filing relating to credit information is considered confidential.

30 **26.1-25.1-08. Indemnification.** An insurer shall indemnify, defend, and hold agents
31 harmless from and against all liability, fees, and costs arising out of or relating to the actions,

1 errors, or omissions of a producer who obtains or uses credit information or insurance scores
2 for an insurer, provided the producer follows the instructions of or procedures established by
3 the insurer and complies with any applicable law or rule. This section does not provide a
4 consumer or other insured with a cause of action that does not exist in the absence of this
5 section.

6 **26.1-25.1-09. Sale of policy term information by consumer reporting agency.**

- 7 1. A consumer reporting agency may not provide or sell data or lists that include any
8 information that in whole or in part was submitted in conjunction with an insurance
9 inquiry about a consumer's credit information or a request for a credit report or
10 insurance score. Such information includes the expiration dates of an insurance
11 policy or any other information that may identify time periods during which a
12 consumer's insurance may expire and the terms and conditions of the consumer's
13 insurance coverage.
- 14 2. Subsection 1 does not apply to data or lists the consumer reporting agency
15 supplies to the insurance producer from whom information was received, the
16 insurer on whose behalf such producer acted, or such insurer's affiliates or holding
17 companies.
- 18 3. This section does not restrict any insurer from being able to obtain a claims history
19 report or a motor vehicle report.

20 **26.1-25.1-10. Severability.** If any provision of this chapter is declared invalid due to an
21 interpretation of or a future change in the federal Fair Credit Reporting Act [Pub. L. 90-321;
22 15 U.S.C. 1681 et seq.], the remaining provisions of this chapter are not affected and remain in
23 effect.

24 **26.1-25.1-11. Application.** This chapter applies to personal insurance policies either
25 written to be effective or renewed after April 30, 2004.