

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1260

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, and noncommercial dwelling fire insurance  
19 policies. Such policies must be individually underwritten for personal, family, or  
20 household use. No other type of insurance is included as personal insurance for  
21 the purpose of this chapter.

22 **26.1-25.1-03. Use of credit information.** An insurer authorized to do business in this  
23 state which uses credit information to underwrite or rate risks may not:

24 1. Use an insurance score that is calculated using income, gender, address, zip  
25 code, ethnic group, religion, marital status, or nationality of the consumer as a  
26 factor.

27 2. Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of  
28 credit information, without consideration of any other applicable underwriting factor  
29 independent of credit information and not expressly prohibited by this section.

- 1           3.    Take an adverse action against a consumer solely because the consumer does  
2                   not have a credit card account without consideration of any other applicable factor  
3                   independent of credit information.
- 4           4.    Consider an absence of credit information or an inability to calculate an insurance  
5                   score in underwriting or rating personal insurance unless the insurer does one of  
6                   the following:
  - 7                   a.    Treats the consumer as otherwise approved by the insurance commissioner if  
8                           the insurer presents information that such an absence or inability relates to  
9                           the risk for the insurer.
  - 10                   b.   Treats the consumer as if the applicant or insured had neutral credit  
11                           information, as defined by the insurer.
  - 12                   c.   Excludes the use of credit information as a factor and use only other  
13                           underwriting criteria.
- 14           5.    Take an adverse action against a consumer based on credit information, unless an  
15                   insurer obtains and uses a credit report issued or an insurance score calculated  
16                   within one hundred twenty days from the date the policy is first written or renewal  
17                   is issued.
- 18           6.    Use credit information unless not later than every thirty-six months following the  
19                   last time that the insurer obtained current credit information for the insured, the  
20                   insurer recalculates the insurance score, or obtains an updated credit report.  
21                   Notwithstanding this section:
  - 22                   a.   At annual renewal, upon the request of a consumer or the consumer's agent,  
23                           the insurer shall reunderwrite and rerate the policy based upon a current  
24                           credit report or insurance score. An insurer need not recalculate the  
25                           insurance score or obtain the updated credit report of a consumer more  
26                           frequently than once in a twelve-month period.
  - 27                   b.   The insurer may obtain current credit information upon any renewal before  
28                           the thirty-six months if consistent with the insurer's underwriting guidelines.
  - 29                   c.   An insurer need not obtain current credit information for an insured, despite  
30                           the requirements of subdivision a, if one of the following applies:

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

28                  **26.1-25.1-04. Dispute resolution and error correction.** If it is determine through the  
29    dispute resolution process set forth in the federal Fair Credit Reporting Act [Pub. L. 90-321;  
30    15 U.S.C. 1681i(a)(5)] that the credit information of a current insured was incorrect or  
31    incomplete and if the insurer receives notice of such determination from either the consumer

1 reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer  
2 within thirty days of receiving the notice. After reunderwriting or rerating the insured, the  
3 insurer shall make any adjustments necessary, consistent with the insurer's underwriting and  
4 rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer  
5 shall refund to the insured the amount of overpayment calculated back to the shorter of either  
6 the last twelve months of coverage or the actual policy period.

7 **26.1-25.1-05. Initial notification.**

- 8 1. If an insurer writing personal insurance uses credit information in underwriting or  
9 rating a consumer, the insurer or the insurer's agent shall disclose, either on the  
10 insurance application or at the time the insurance application is taken, that the  
11 insurer or the insurer's agent may obtain credit information in connection with such  
12 application. Such disclosure must be either written or provided to an applicant in  
13 the same medium as the application for insurance. The insurer or the insurer's  
14 agent need not provide the disclosure statement required under this section to any  
15 insured on a renewal policy if such consumer has previously been provided a  
16 disclosure statement.
- 17 2. Use of the following example disclosure statement constitutes compliance with this  
18 section: "In connection with this application for insurance, we may review your  
19 credit report or obtain or use a credit-based insurance score based on the  
20 information contained in that credit report. We may use a third party in connection  
21 with the development of your insurance score."

22 **26.1-25.1-06. Adverse action notification.** If an insurer takes an adverse action  
23 based upon credit information, the insurer must meet the notice requirements of this section.  
24 The insurer shall:

- 25 1. Provide notification to the consumer that an adverse action has been taken, in  
26 accordance with the requirements of the federal Fair Credit Reporting Act [Pub. L.  
27 90-321; 15 U.S.C. 1681m(a)]; and
- 28 2. Provide notification to the consumer explaining the reason for the adverse action.  
29 The reasons must be provided in sufficiently clear and specific language so that a  
30 person can identify the basis for the insurer's decision to take an adverse action.  
31 The notification must include a description of up to four factors that were the

1 primary influences of the adverse action. The use of generalized terms such as  
2 "poor credit history", "poor credit rating", or "poor insurance score" does not meet  
3 the explanation requirements of this subsection. Standardized credit explanations  
4 provided by consumer reporting agencies or other third-party vendors are deemed  
5 to comply with this section.

6 **26.1-25.1-07. Filing.**

- 7 1. An insurer that uses insurance scores to underwrite or rate risks shall file the  
8 insurer's scoring models or other scoring processes with the insurance  
9 department. A third party may file scoring models on behalf of an insurer. A filing  
10 that includes insurance scoring must include loss experience justifying the use of  
11 credit information.
- 12 2. Any filing relating to credit information is considered a trade secret under chapter  
13 47-25.1.

14 **26.1-25.1-08. Indemnification.** An insurer shall indemnify, defend, and hold agents  
15 harmless from and against all liability, fees, and costs arising out of or relating to the actions,  
16 errors, or omissions of a producer who obtains or uses credit information or insurance scores  
17 for an insurer, provided the producer follows the instructions of or procedures established by  
18 the insurer and complies with any applicable law or rule. This section does not provide a  
19 consumer or other insured with a cause of action that does not exist in the absence of this  
20 section.

21 **26.1-25.1-09. Sale of policy term information by consumer reporting agency.**

- 22 1. A consumer reporting agency may not provide or sell data or lists that include any  
23 information that in whole or in part was submitted in conjunction with an insurance  
24 inquiry about a consumer's credit information or a request for a credit report or  
25 insurance score. Such information includes the expiration dates of an insurance  
26 policy or any other information that may identify time periods during which a  
27 consumer's insurance may expire and the terms and conditions of the consumer's  
28 insurance coverage.
- 29 2. Subsection 1 does not apply to data or lists the consumer reporting agency  
30 supplies to the insurance producer from whom information was received, the

1 insurer on whose behalf such producer acted, or such insurer's affiliates or holding  
2 companies.

3 3. This section does not restrict any insurer from being able to obtain a claims history  
4 report or a motor vehicle report.

5 **26.1-25.1-10. Severability.** If any provision of this chapter is declared invalid due to an  
6 interpretation of or a future change in the federal Fair Credit Reporting Act [Pub. L. 90-321;  
7 15 U.S.C. 1681 et seq.], the remaining provisions of this chapter are not affected and remain in  
8 effect.

9 **26.1-25.1-11. Application.** This chapter applies to personal insurance policies either  
10 written to be effective or renewed after April 30, 2004.