

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1260
(Representatives Koppelman, Grosz, N. Johnson)
(Senators Every, Klein, Krebsbach)

AN ACT to create and enact chapter 26.1-25.1 of the North Dakota Century Code, relating to use of credit information in personal insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

1. "Adverse action" means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance.
2. "Affiliate" means any company that controls, is controlled by, or is under common control with another company.
3. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.
4. "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.
5. "Consumer reporting agency" means any person that for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
6. "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. The term does not include information that is not credit related, regardless of whether the information is contained in a credit report or in an application or is used to calculate an insurance score.
7. "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.
8. "Insurance score" means a number or rating that is derived from an algorithm, a computer application, a model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

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

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

1. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.
2. Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by this section.
3. Take an adverse action against a consumer solely because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information.
4. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:
 - a. Treats the consumer as otherwise approved by the insurance commissioner if the insurer presents information that such an absence or inability relates to the risk for the insurer.
 - b. Treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.
 - c. Excludes the use of credit information as a factor and use only other underwriting criteria.
5. Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within one hundred twenty days from the date the policy is first written or renewal is issued.
6. Use credit information unless not later than every thirty-six months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score, or obtains an updated credit report. Notwithstanding this section:
 - a. At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and reate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period.
 - b. The insurer may obtain current credit information upon any renewal before the thirty-six months if consistent with the insurer's underwriting guidelines.
 - c. An insurer need not obtain current credit information for an insured, despite the requirements of subdivision a, if one of the following applies:
 - (1) The insurer is treating the consumer as otherwise approved by the commissioner.
 - (2) The insured is in the most favorably priced tier of the insurer, within a group of affiliated insurers. However, the insurer may order such report if consistent with the insurer's underwriting guidelines.

- (3) Credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer may use credit for underwriting or rating such insured upon renewal if consistent with the insurer's underwriting guidelines.
 - (4) The insurer reevaluates the insured beginning no later than thirty-six months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.
7. Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:
 - a. Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information.
 - b. Inquiries relating to insurance coverage if so identified on a consumer's credit report.
 - c. Collection accounts with a medical industry code if so identified on the consumer's credit report.
 - d. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered.
 - e. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of one another, unless only one inquiry is considered.

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

26.1-25.1-05. Initial notification.

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

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

1. Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act [Pub. L. 90-321; 15 U.S.C. 1681m(a)]; and
2. Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification must include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this section.

26.1-25.1-07. Filing.

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

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

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

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1260.

House Vote: Yeas 88 Nays 4 Absent 2

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State