

SENATE BILL NO. 2075

Presented by: **Jon Godfread**
 North Dakota Insurance Commissioner
 North Dakota Insurance Department

Before: **Senate Industry, Business and Labor**
 Senator Jerry Klein, Chairman

Date: **January 12, 2021**

Good Morning Chairman Klein and members of the committee. My name is Jon Godfread, North Dakota Insurance Commissioner. I appear before you in support of Senate Bill No. 2075.

Before we go over the bill, I wanted to handout some proposed amendments that we have worked on in response to some of the concerns we have heard from the industry.

Also, I want to mention what this bill does NOT do, this bill does not create a new requirement for insurers to implement a new system or new process, it simply clarifies that if you have a system in place you cannot restrict licensed agents or authorized third parties from accessing their clients information on that system.

This bill does NOT prohibit insurers from blocking access to malicious software designed to cause harm, and the determination of what is a potentially malicious software is left up to the insurer to determine.

In our estimation Senate Bill 2075 is a consumer-friendly bill, in that it allows technology and technology companies to assist consumers when they compare and shop for their insurance. As you can imagine, when doing a risk analysis or a comparison of insurance policies very few people read their insurance policies, and even fewer fully understand what is contained in those policies. Technology can help in this area by doing a comparison risk analysis for the consumer (or their agent). The first step in any of this process is to get a copy of the current policy.

Think back 20 years ago, as a consumer when you wanted to shop for insurance what did you have to do? You had to first get a copy of your policy, or at minimum your declaration pages and then take them to an agent or company and get your quotes. This was a cumbersome activity and very few consumers went to this trouble of comparing their policies when shopping for coverage.

When consumers shop for insurance, they obviously want coverages that meet their needs and covers their risk exposures. Getting an apples to apples comparison can be an extremely difficult process. No matter how similar the policies seem, insurance (especially in the property and casualty market) is rarely exactly the same from company to company.

However, with the explosion of technology, a consumer can get a quote faster and can get a better comparison of their coverage. Last session NDCC §26.1-02-33 was introduced as a first step for a faster

comparison and a better consumer experience. NDCC §26.1-02-33, in short allows companies to post their policies for a consumer online. If a consumer wanted to understand their risk or shop for a new policy, they would still have to read the policy and understand it. Furthermore, if a consumer wanted to shop for a different company the consumer would print out their policy and then go to an agent's office to get a comparison quote. Technology has exploded and there are companies that can expedite this process. There are third party companies, that are licensed agents, that have the ability, if given permission by the consumer to go to a company's online portal and find the insurance policy, compare policies and do any kind of risk analysis that is needed.

A few companies have shut down access to these licensed agents or third parties trying to use the online portal. Even though these third parties and licensed agents have received the consumers permission. Some companies have blocked third parties and licensed agents IP addresses completely. This creates an anti-competitive environment. Senate Bill 2075 is a simple change that prohibits a company or insurer from preventing access to these third parties, however it does not impede a prohibition of preventing malicious software. In short, it's letting the good guys in while also keeping the good bad guys out.

Senate Bill 2075 allows for a more competitive market by allowing new technologies to be used.

We understand the concerns that will likely be raised, we can put those concerns into two buckets. First, this is new, and North Dakota would be the first state to prohibit an insurance company from preventing access to an authorized and licensed third-party access to a website. The belief that because something is new it should not be done is understandable but does not hold water in this instance. I serve as the chairman of the Innovation and Technology working group for the National Association of Insurance Commissioners, in that role I have spent a considerable amount of time reviewing how technology and the insurance industry interact, and what if any changes need to be made to more readily adapt to our changing landscape. Put simply, this is some low hanging fruit that can help consumers without putting any additional burden on our insurers.

Secondly, you will likely hear, even with the amendment that it will be impossible to distinguish a good actor from a bad actor. I believe this is blown out of proportion and would give you an example. Currently, a company can restrict access to one of these authorized and licensed services, and if that is done in good faith, that is understandable. However, currently even if the service can contact the company and shown they are not a malicious actor the company may continue blocking their access.

Here is another analogy, right now North Dakota Information Technology (NDIT) blocks certain websites from use from on state

systems, we would all agree this is important. However sometimes these websites really aren't corrupt and may be needed for research or other things. NDIT can be give permission to access these sites if they are provided the address and a reason access it needed.

NDIT would then review, make the determination that the site either is truly harmful or not and if not allow access. The same can be done here with these third parties.

In fact, these third parties have said in the past that they would be willing to write letters to insurance companies, giving them their IP address and stating what they're trying to do. This way the company can grant an access to their online portal.

Again nothing in this bill restricts the company from blocking malicious software or requires them to implement a new system to provide information in an electronic form, it just simply requires that if they do provide that information in an electronic format they cannot restrict access to parties that are authorized and licensed to act on behalf of the consumer.

This issue is important to ensure our consumers are more engaged in their policies and getting the information in the hands of the consumer and their agents to help them make decisions.

Thank you, Mr. Chairman and committee members, I am happy to attempt to answer any questions you might have.

PROPOSED AMENDMENTS TO BILL NO. 2075

Page 2, Line 13, insert “.” after “may not restrict the insured from”

Page 2, Lines 14-17 replace with:

“a. using third-party software to access policy, endorsement, or other
policy related information; or

b. delegating the insured’s authorization to access policy, endorsement, or
other policy-related information using the insured’s access credentials.

Nothing in this subsection prohibits an insurer from preventing access by
malicious software designed to cause harm to a computer system or network.

Nothing in this subsection requires an insurer to provide policy information by
electronic means.”

Page 2, line 19, after the period insert:

**“SECTION 2. AMENDMENT. Subsection 10 of Section 26.1-04-03 of the
North Dakota Century Code is amended and reenacted as follows:**

10. Unfair handling of communications by insurance company.

a. Failing to adopt and implement reasonable standards for the prompt
handling of written communications, primarily expressing grievances,
received by the insurance company from insureds or claimants.

- b. Restricting access to the policy, endorsements, or policy-related information in violation of section 26.1-02-33(2)."

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota
Introduced by

SENATE BILL NO. 2075

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact section 26.1-02-33 of the North Dakota Century Code, 2 relating to
third-party software access to insurance policy information.

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

4 **SECTION 1. AMENDMENT.** Section 26.1-02-33 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-02-33. Posting policy on internet.**

7 1. An insurance policy and an endorsement that does not contain personally identifiable
8 information may be mailed, delivered, or posted on the insurer's website. If the insurer
9 elects to post an insurance policy and an endorsement on the insurer's website in lieu
10 of mailing or delivering the policy and endorsement to the insured, the insurer shall

11 comply with the following conditions:

- 12 a. The policy and an endorsement must be accessible to the insured and producer
13 of record and remain that way while the policy is in force;
- 14 b. After the expiration of the policy, the insurer shall archive the expired policy and
15 endorsement for a period of five years or other period required by law, and make
16 the policy and endorsement available upon request;
- 17 c. The policy and endorsement must be posted in a manner that enables the
18 insured and producer of record to print and save the policy and endorsement
19 using a program or application that is widely available on the internet and free to
20 use;
- 21 d. The insurer shall provide the following information in, or simultaneous with, each
22 declaration page provided at the time of issuance of the initial policy and any
23 renewals of the policy:

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(1) A description of the exact policy and endorsement form purchased by the insured;

(2) A description of the insured's right to receive, upon request and without charge, a paper copy of the policy and endorsement by mail; and

(3) The internet address at which the policy and endorsement are posted;

e. The insurer, upon an insured's request and without charge, shall mail a paper copy of the policy and endorsement to the insured; and

f. The insurer shall provide notice, in the format preferred by the insured, of any change to the forms or endorsement; the insured's right to obtain, upon request and without charge, a paper copy of the forms or endorsement; and the internet address at which the forms or endorsement are posted.

2. If the insurer provides the insured access to policy, endorsement, or other policy related information by electronic means, the insurer may not restrict the insured from:
~~using third-party software to access policy, endorsement, or other policy-related information. This subsection does not:~~

~~a. Prohibit an insurer from preventing access by malicious software; or~~

~~b. Require an insurer to provide policy information by electronic means.~~

a. using third-party software to access policy, endorsement, or other policy-related information; or

b. delegating the insured's authorization to access policy, endorsement, or other policy-related information using the insured's access credentials.

Nothing in this subsection prohibits an insurer from preventing access by malicious software designed to cause harm to a computer system or network. Nothing in this subsection requires an insurer to provide policy information by electronic means.

3. This section does not affect the timing or content of any disclosure or document required to be provided or made available to any insured under applicable law.

SECTION 2. AMENDMENT. Subsection 10 of Section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

10. Unfair handling of communications by insurance company.

a. Failing to adopt and implement reasonable standards for the prompt handling of written communications, primarily expressing grievances, received by the insurance company from insureds or claimants.

b. Restricting access to the policy, endorsements, or policy-related information in violation of section 26.1-02-33(2).