Jim Poolman
Commissioner of Insurance

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

BULLETIN 2005-2

TO: All Companies Writing Personal Lines Insurance

FROM: Jim Poolman, Commissioner

DATE: June 21, 2005

SUBJECT: Use of Loss History Information in Personal Lines

Senate Bill No. 2186, relating to personal insurance loss history information, was passed by the North Dakota Legislature with an effective date of August 1, 2005.

To help interpret the new statute found in N.D. Cent. Code Chapter 26.1-25.2, the Department provides the following answers to questions raised by the industry:

Question No. 1: Does the law apply to private passenger autos written on a commercial lines policy?

Answer: No. The statute applies only to private passenger auto policies written on a personal auto policy. The statute does not apply to commercial lines policies.

Question No. 2: What is an inquiry and what is a claim?

Answer: The Department will allow each company to make a determination as to what is an inquiry or what is a claim based on its individual practices. It should be noted that regardless as to whether an activity is classified as an inquiry or claim does not matter if no payment is made.

Question No. 3: Does the prohibition section apply only if the loss history information is obtained from a private claims database like CLUE or A Plus?

Answer: No. The statute does not name either CLUE or A Plus. The items listed in the prohibition section may not be used regardless of the source of the information.

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Question No. 4: Is a company prohibited from using a claim that is open with a reserve (thus expected to be paid)?

Answer: No. The statute does not prohibit the use of an open claim with reserve.

Question No. 5: What is a "first party property claim"? The term is commonly associated with homeowners, mobile homeowners and dwelling. Does it apply to private passenger auto for purposes of this section?

Answer: Yes. The statute refers to auto insurance as well as to the other types of property insurance. Accordingly the term includes an auto property claim.

Question No. 6: Does a first party property claim for wind and hail include an auto collision claim?

Answer: No. The statute does not specifically address collision claims. Since property claims for wind and hail loss are understood to be comprehensive claims, a first party property claim for wind and hail does not include an auto collision claim.

Question No. 7: When does the five-year "look back" period start?

Answer: The five-year "look back" period is the five-year period prior to the date of application or the date of renewal.

Question No. 8: Does the statute's prohibition on the sole use of a previous owner's loss history mean only those claims assignable to the owner's actions?

Answer: No. The statute does not distinguish between claims assignable to the owner's actions from other claims. Therefore, the Department interprets the statute to include all property losses to that property. It should be noted that the statute prohibits declining an applicant based solely on the previous owner's loss history, but allows the use of the loss information if repairs for that loss have not been made. Also, a company may use other underwriting factors in its assessment and decision.

Question No. 9: Can the Department change the effective date beyond August 1, 2005?

Answer: No. The Department does not have authority to change the effective date of the law.

Question No. 10: Is a company required to refile rating manuals and rating rules?

Answer: Maybe. The need to refile may vary from company to company. If a company has on file a rule, factor, or formula that specifically includes the use of one or more of the newly prohibited factors, then an amendatory filing must be made. If a company did not include the use of these factors in a rule, factor or formula but treated the factors as underwriting criteria, then there is no need to file.

Question No. 11: There is relatively little time for companies to make the refilings, if necessary, and get approval prior to August 1, 2005. Will the Department take this into consideration if a conflict arises?

Answer: Yes. The Department recognizes that some companies may have difficulty in making filings prior to the effective date. The Department encourages companies to make amendatory filings as soon as possible. Should a consumer complaint be filed after the effective date, the Department will take into consideration the company's efforts to become compliant. It should be noted, however, that regardless as to whether or not a company has refiled, the provisions of the new statute will apply to any decision affecting a consumer made after August 1.

Question No. 12: The new law requires that a company provide a consumer with notice regarding the use of loss history information. Does a company have to file that consumer notice with the Department ?

Answer: No. A policyholder notice is not normally considered to be part of the insurance contract; therefore, there is no need to file the notice with the Department.

JP/njb