DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Jim Poolman
Commissioner of Insurance

# MEMORANDUM

TO: All Property and Casualty Companies Writing Personal Lines Insurance

FROM: Jim Poolman, Commissioner

DATE: June 29, 2007

SUBJECT: Use of Credit Information in Personal Lines – U.S. Supreme Court Case Decision – Fair Credit Reporting Act

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Shortly after the implementation of a new statute that addressed the use of credit information in personal lines insurance (N.D. Century Code Chapter 26.1-25.1), the Department issued a memorandum dated September 27, 2005.

In that memorandum the Department indicated that its interpretation of the new statute as it pertained to the matter of "adverse actions" was similar to and supported by a Ninth Circuit Federal Court decision in the consolidated cases of Reynolds v. Hartford Financial Services Group and Edo v. GEICO, i.e. Reynolds v. Hartford Financial Services Group, 416 F.3d 1097 (9th Cir. 2005).

Subsequent developments in the Reynolds case and another similar case recently culminated in a U.S. Supreme Court decision in the consolidated cases of Safeco Insurance Co. of America v. Burr and GEICO v. Edo, i.e. Safeco Insurance Co. of America v. Burr, 127 S.Ct. 2201 (US 2007). The Department, along with the National Association of Insurance Commissioners and other states, filed an amicus brief with the court in support of the Ninth Circuit Court's opinion.

The result as to the issue of "adverse actions" is mixed. While it was determined the "adverse actions" are applicable to new customers, the court did not agree that it applies when the new customer does not receive the best rate but rather that it applies only when the new customer's rate is worse than what they would have received from a neutral rate (without the use of credit information).

N.D. Cent. Code § 26.1-25.1-06 specifically requires companies to provide notification to a consumer that an adverse action has taken place in accordance with the requirements of the federal Fair Credit Reporting Act.

600 EAST BOULEVARD DEPT 401 · BISMARCK, ND 58505-0320 · (701) 328-2440 · FAX (701) 328-4880
Consumer Hotline: 1-800-247-0560 • Relay North Dakota 1-800-366-6888 (TTY)
insuranc@state.nd.us

Accordingly, it is expected that all property and casualty companies that use credit information in the underwriting and rating of personal lines insurance will give notice of "adverse action" in accordance with the federal Fair Credit Reporting Act and the Safeco Insurance Co. of America v. Burr, 127 S.Ct. 2201 (US 2007) decision mentioned above.

The Department memorandum of September 27, 2005, is withdrawn and replaced by this memorandum. Department Bulletin 2004-1 issued April 21, 2004, in conjunction with the initial implementation of the statute (N.D. Cent. Code Chapter 26.1-25.1) was not impacted by this decision and continues to remain in effect.

JP/njb