

**OPINION
70-187**

March 9, 1970 (OPINION)

Honorable J. O. Wigen

Commissioner of Insurance

RE: Insurance - Credit Life and Health Insurance - Premiums

This is in response to your request for an opinion on the construction and interpretation of section 26-35-09(4), as amended, of the North Dakota Century Code, which provides as follows:

4. The amount charged to a debtor for any credit life or credit health and accident insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined."

To more fully understand the provisions of this section, it will be helpful to examine statutory provisions and other provisions found within the same chapter. The purpose of the Act is set out in section 26-35-01, as follows:

PURPOSE. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed."

A debtor is defined in Subsection 4 of section 26-35-03 of the North Dakota Century Code as follows:

4. 'Debtor' means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction; * * * ."

A creditor is defined in Subsection 3 of section 26-35-03 of the North Dakota Century Code as follows:

3. 'Creditor' means the lender of money or vendor or lessor of goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender, vendor, or lessor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them; * * * ."

By taking into account the definitions, the section in question can be paraphrased as follows: The borrower, purchaser or lessee of goods, services, etc., shall not be charged more than what the insurer computes the premium to be at the time when the indebtedness is incurred. The maximum charge would be the going rate. The going rate means that rate as determined by taking into account the type of

insurance, the amount, the age of the debtor, and the charge so determined would be the maximum charge that may be made to the debtor.

The language of the section in question does not permit an add-on by the creditor for any services he might have performed, whether such services are on behalf of the insurance company or on behalf of the debtor. Any charge made for the insurance must be limited to the rate set by the insurance company which invariably is regulated by the Insurance Commissioner. The Act does not prevent charging a lesser rate but it does specifically prohibit the charging of a rate in excess of such amount.

This section prohibits a creditor from charging anything for services rendered in writing or in any manner securing the insurance for the debtor.

We should also note that section 26-35-10 permits the delivery or issuance of an insurance policy only by an insurer authorized to do so and may be issued only through holders of licenses or authorizations issued by the Commissioner. This, in effect, means that the creditor may not act as an agent of the insurance company unless he is so licensed or authorized by the Insurance Commissioner.

As such agent, he could receive a commission which is authorized from the insurance company but he may not make an additional charge to the debtor for any services rendered.

The statute is designed to prevent the creditor from making any additional charge for obtaining insurance.

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