

HOUSE BILL NO. 1440

Introduced by

Representatives D. Ruby, Kasper, Ostlie, Schobinger, Tveit, Vigesaa

Senators Klein, Luick, Rust, Wobbema

1 A BILL for an Act to create and enact chapter 26.1-40.2 of the North Dakota Century Code,
2 relating to delivery network company insurance; and to amend and reenact sections 39-34-01,
3 39-34-02, 39-34-03, 39-34-04, and 39-34-06 of the North Dakota Century Code, relating to
4 transportation and delivery company networks.

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

6 ~~SECTION 1. Chapter 26.1-40.2 of the North Dakota Century Code is created and enacted~~
7 ~~as follows:~~

8 ~~26.1-40.2-01. Definitions.~~

9 ~~As used in this chapter and chapter 39-34, unless the context otherwise requires:~~

10 ~~1. "Application off stage" of operation means the time when the driver is operating the~~
11 ~~vehicle for personal noncommercial reasons and not engaged in any manner or~~
12 ~~operation for the delivery network company.~~

13 ~~2. "Application on stage" means the time the driver is logged onto the online-enabled~~
14 ~~application of a delivery network company and available for hire but not engaged and~~
15 ~~has no goods on board.~~

16 ~~3. "Customer" means a person who uses a delivery network company's online-enabled~~
17 ~~application or platform to connect with a delivery network company driver to receive a~~
18 ~~prearranged delivery of goods from the driver using the driver's personal vehicle.~~

19 ~~4. "Delivery network company" means a person operating in this state which uses an~~
20 ~~online-enabled application or platform to connect a customer with an independent~~
21 ~~participating driver who provides prearranged delivery services using a personal~~
22 ~~vehicle. A delivery network company may not be deemed to control, direct, or manage~~
23 ~~the personal vehicles or participating drivers that connect to the delivery network.~~

1 ~~company's online-enabled application or platform, unless agreed to by written~~
2 ~~contract.~~

3 ~~5. "Delivery network company insurance" means an insurance policy that covers a~~
4 ~~driver's use of a vehicle in connection with a delivery network company's online-~~
5 ~~enabled application or platform.~~

6 ~~6. "Engaged stage" means the time from the moment a participating driver accepts a~~
7 ~~delivery request on the delivery network company's online-enabled application or~~
8 ~~platform until the driver completes the transaction on the online-enabled application or~~
9 ~~platform or until the delivery is complete, whichever is later.~~

10 ~~7. "Goods" means any item, including food, other than mail or a package to which~~
11 ~~postage has been affixed.~~

12 ~~8. "Goods on-board stage" means the time when there are goods in the vehicle pursuant~~
13 ~~to the driver's participation in a delivery network company.~~

14 ~~9. "Participating driver" or "driver" means an individual who:~~

15 ~~a. Receives connections to a potential customer and related services from a~~
16 ~~delivery network company in exchange for payment or a fee to the delivery~~
17 ~~network company; and~~

18 ~~b. Uses a personal vehicle to offer or provide prearranged delivery services to a~~
19 ~~customer upon connection through an online-enabled application or platform~~
20 ~~controlled by a delivery network company in return for compensation or payment~~
21 ~~of a fee.~~

22 ~~10. "Personal injury protection" means basic no-fault benefits as defined under section~~
23 ~~26.1-41-01.~~

24 ~~**26.1-40.2-02. Required disclosures.**~~

25 ~~A delivery network company shall disclose in writing or electronic form to participating~~
26 ~~drivers, as part of its agreement with those drivers:~~

27 ~~1. The insurance coverage and limits of liability that the delivery network company~~
28 ~~provides while the driver uses a vehicle in connection with a delivery network~~
29 ~~company's online-enabled application or platform, and shall advise a participating~~
30 ~~driver that the driver's personal automobile insurance policy may not provide coverage~~
31 ~~under the agreement.~~

1 ~~2. When the driver's personal automobile insurance policy may not provide collision or~~
2 ~~comprehensive coverage, under the agreement.~~

3 ~~3. An instruction to the driver to notify the driver's personal automobile insurer of the~~
4 ~~driver's participation in the delivery network.~~

5 ~~4. A notice that:~~

6 ~~a. The driver's personal automobile insurance policy may exclude coverage for~~
7 ~~delivery services and the driver's personal auto policy may need to be revised,~~
8 ~~endorsed, or changed to provide coverage for delivery services; and~~

9 ~~b. Failure to revise, endorse, or change the driver's personal auto policy may result~~
10 ~~in no coverage.~~

11 ~~**26.1-40.2-03. Coverage required when delivery network company application is**~~
12 ~~**engaged until completion of delivery of goods.**~~

13 ~~1. A delivery network company and any participating driver shall maintain delivery~~
14 ~~network company insurance that provides for the following requirements that apply to~~
15 ~~delivery network company insurance during the engaged stage and during the goods-~~
16 ~~on-board stage.~~

17 ~~a. Delivery network company liability insurance is primary and in the amount of at~~
18 ~~least twenty five thousand dollars per person and fifty thousand dollars per~~
19 ~~incident for death and bodily injury and at least twenty-five thousand dollars for~~
20 ~~property damage. The requirements for the coverage required by this subdivision~~
21 ~~may be satisfied by any of the following:~~

22 ~~(1) Delivery network company insurance maintained by a participating driver.~~

23 ~~(2) Delivery network company insurance maintained by a delivery network~~
24 ~~company.~~

25 ~~(3) Any combination of paragraphs 1 and 2.~~

26 ~~b. Delivery network company insurance coverage provided under this section for~~
27 ~~uninsured motorist coverage must meet the requirements under section~~
28 ~~26.1-40-15.2, which is primary coverage.~~

29 ~~c. Delivery network company insurance coverage provided under this section for~~
30 ~~underinsured motorist coverage must meet the requirements under section~~
31 ~~26.1-40-15.3, which is primary coverage.~~

- 1 ~~_____ d. Delivery network company insurance coverage must provide primary personal~~
2 ~~injury protection to drivers, passengers, and pedestrians under chapter 26.1-41.~~
- 3 ~~_____ e. The primary insurer, in the case of insurance coverage provided under~~
4 ~~subdivision a, has the sole duty to defend and indemnify the insured.~~
- 5 ~~_____ f. Coverage under a delivery network company insurance policy may neither be~~
6 ~~dependent on a driver's personal automobile insurance policy carrier first denying~~
7 ~~a claim nor a personal automobile insurance policy carrier being required to first~~
8 ~~deny a claim.~~
- 9 ~~_____ g. If delivery network company insurance maintained by a participating driver to~~
10 ~~fulfill the insurance obligations of this section has excluded coverage according to~~
11 ~~its policy or ceased to exist, the delivery network company shall provide the~~
12 ~~coverage required by this section beginning with the first dollar of a claim.~~
- 13 ~~_____ **26.1-40.2-04. Insurance coverage during the application on stage with no goods in**~~
14 ~~**vehicle.**~~
- 15 ~~_____ 1. During the application on stage, the delivery network company insurance must~~
16 ~~include:~~
- 17 ~~_____ a. Motor vehicle liability coverage that is primary coverage. The coverage must~~
18 ~~include at least fifty thousand dollars per person and one hundred thousand~~
19 ~~dollars per incident for death and bodily injury and at least twenty-five thousand~~
20 ~~dollars for property damage.~~
- 21 ~~_____ b. Uninsured motorist coverage under section 26.1-40-15.2 which is primary~~
22 ~~coverage.~~
- 23 ~~_____ c. Underinsured motorist coverage under section 26.1-40-15.3 which is primary~~
24 ~~coverage.~~
- 25 ~~_____ d. Personal injury protection under chapter 26.1-41 which is primary coverage.~~
- 26 ~~_____ 2. The requirements for coverage under this section may be satisfied by:~~
- 27 ~~_____ a. Delivery network company insurance maintained by a participating driver;~~
- 28 ~~_____ b. Delivery network company insurance maintained by a delivery network company;~~
29 ~~or~~
- 30 ~~_____ c. Any combination of subdivisions a and b.~~
- 31 ~~_____ 3. The following apply to insurance requirements under this section:~~

1 ~~_____ a. The primary insurer, in the case of insurance coverage provided under~~
2 ~~subdivision a of subsection 1, has the sole duty to defend and indemnify the~~
3 ~~insured.~~

4 ~~_____ b. Coverage under a delivery network company insurance policy may neither be~~
5 ~~dependent on a driver's personal automobile insurance policy carrier first denying~~
6 ~~a claim nor a personal automobile insurance policy carrier being required to first~~
7 ~~deny a claim.~~

8 ~~_____ c. If delivery network company insurance maintained by a participating driver to~~
9 ~~fulfill the insurance obligations of this section has excluded coverage according to~~
10 ~~its policy or ceased to exist, the delivery network company shall provide the~~
11 ~~coverage required by this section beginning with the first dollar of a claim.~~

12 ~~_____ **26.1-40.2-05. Liability of delivery network company beyond required limits.**~~

13 ~~_____ This chapter does not limit the liability of a delivery network company arising out of an~~
14 ~~automobile accident involving a participating driver in any action for damages against a delivery~~
15 ~~network company for an amount above the required insurance coverage.~~

16 ~~_____ **26.1-40.2-06. Discretionary personal insurance where offered by personal automobile**~~
17 ~~**insurer.**~~

18 ~~_____ A personal automobile insurer may offer an automobile liability insurance policy, or an~~
19 ~~amendment or endorsement to an existing policy that covers a private passenger vehicle or~~
20 ~~similar type of vehicle with a passenger capacity of fewer than eight persons, including the~~
21 ~~driver, while used in connection with a delivery network company's online-enabled application or~~
22 ~~platform.~~

23 ~~_____ **26.1-40.2-07. Duty to cooperate.**~~

24 ~~_____ In a claims coverage investigation involving a participating driver, a delivery network~~
25 ~~company or its insurer shall cooperate with insurers involved in the claims coverage~~
26 ~~investigation to facilitate the exchange of information, including the provision of dates and times~~
27 ~~at which an accident occurred involving a participating driver and the precise times that the~~
28 ~~participating driver logged on and off the delivery network company's online-enabled application~~
29 ~~or platform.~~

1 ~~— **26.1-40.2-08. Proof of insurance.**~~

2 ~~— A participating driver of a delivery network company shall carry proof of delivery network~~
3 ~~company insurance coverage at all times during the driver's use of a vehicle in connection with~~
4 ~~a delivery network company's online-enabled application or platform. In the event of an~~
5 ~~accident, a participating driver shall provide this insurance coverage information to any other~~
6 ~~party involved in the accident and to a police officer, upon request.~~

7 ~~— **26.1-40.2-09. Authorized or eligible carrier.**~~

8 ~~— Delivery network company insurance required by this chapter may be placed with an insurer~~
9 ~~authorized to do business in the state or with a surplus lines insurer eligible under section~~
10 ~~26.1-44-03.~~

11 ~~— **26.1-40.2-10. Does not supersede other requirements.**~~

12 ~~— This chapter may not be construed to limit application of any other provision of law.~~

13 **SECTION 1.** Chapter 26.1-40.2 of the North Dakota Century Code is created and enacted
14 as follows:

15 **26.1-40.2-01. Definitions.**

16 1. "Delivery available period" means the period when a driver:

- 17 a. Has logged on to a digital network and is available to receive requests to provide
18 delivery services from a delivery network company;
19 b. Is operating a personal vehicle; and
20 c. Is not providing delivery services or operating in the delivery service period.

21 2. "Delivery network company" means a corporation, partnership, sole proprietorship, or
22 other entity that operates in the state and uses a digital network to connect a delivery
23 network company customer to a delivery network driver to provide delivery services. A
24 delivery network company may not be deemed to control, direct, or manage the
25 personal vehicle or delivery network drivers that connect to the delivery network
26 company's digital network, unless agreed to by written contract.

27 3. "Delivery network company customer" means a person that orders the delivery of
28 goods, where the delivery network driver delivers the goods at the direction of the
29 delivery network company customer.

30 4. "Delivery network driver" means an individual who provides delivery services through
31 a delivery network company's digital network using a personal vehicle.

1 5. "Delivery service period" means the period:

2 a. Beginning when a driver starts operating a personal vehicle en route to pick up a
3 good for a delivery as documented via a digital network controlled by a delivery
4 network company;

5 b. Continuing while the driver transports the requested delivery; and

6 c. Ending upon delivery of the requested good to:

7 (1) The delivery network company customer or the last delivery network
8 company customer in a series of deliveries; or

9 (2) A location designated by the delivery network company, including for
10 purposes of returning the good.

11 6. "Delivery services" means the fulfillment of delivery requests made by a delivery
12 network company customer through a digital network, including the pickup of any good
13 and the delivery of the good to a delivery network company customer by a delivery
14 network driver. Delivery services may include a series of deliveries to different
15 customers.

16 7. "Digital network" means any online-enabled application, software, website, or system
17 offered or used by a delivery network company which enables deliveries with delivery
18 network drivers.

19 8. "Personal injury protection" means basic no-fault benefits as defined under section
20 26.1-41-01.

21 9. "Personal vehicle" means a vehicle that is:

22 a. Used by a delivery network driver to provide delivery services via a digital
23 network; or

24 b. Owned, leased, or otherwise authorized for use by the delivery network driver.

25 **26.1-40.2-02. Required disclosures.**

26 A delivery network company shall disclose in writing or electronic form to a participating
27 delivery network driver, as part of the delivery network company's agreement with the driver:

28 1. The insurance coverage, including the types of coverage and the limits for each
29 coverage, the delivery network company provides while the driver uses a personal
30 vehicle in connection with a delivery network company's digital network; and

1 2. That the driver's automobile insurance policy might not provide any coverage during
2 the delivery available period, if it applies, or the delivery service period.

3 **26.1-40.2-03. Insurance requirements - Delivery network companies and delivery**
4 **network company drivers.**

5 1. A delivery network company shall ensure that during the delivery available period, if it
6 applies, and during the delivery service period, primary automobile liability insurance is
7 in place which recognizes the driver is a delivery network driver or that does not
8 exclude coverage for use of a personal vehicle to provide deliveries.

9 2. During the delivery service period and delivery available period, the delivery network
10 driver, delivery network company, or any combination of the two shall maintain:

11 a. Insurance that insures the driver for liability to third parties of not less than fifty
12 thousand dollars for damages arising out of bodily injury sustained by any one
13 person in an accident, of not less than one hundred thousand dollars for
14 damages arising out of bodily injury sustained by all persons injured in an
15 accident, and of not less than twenty-five thousand dollars for all damages arising
16 out of damage to or destruction of property in an accident;

17 b. Uninsured motorist coverage under section 26.1-40-15.2;

18 c. Underinsured motorist coverage under section 26.1-40-15.3; and

19 d. Personal injury protection under chapter 26.1-41.

20 3. If the insurance coverage maintained by a delivery network driver under subsections 1
21 and 2 has lapsed or does not provide the required coverage, insurance maintained by
22 the delivery network company must provide the coverage required by subsections 1
23 and 2 beginning with the first dollar of a claim and the insurance maintained by the
24 delivery network company has the duty to defend the claim.

25 4. Coverage under an automobile insurance policy maintained by the delivery network
26 company may not be dependent on another motor vehicle liability insurer first denying
27 a claim, or on another motor vehicle liability insurance policy being required to first
28 deny a claim.

29 5. Insurance coverage required by this section may be obtained from an insurance
30 company duly licensed to transact business under title 26.1 or by an eligible surplus
31 lines broker.

1 6. During a claim coverage investigation, a delivery network company or a delivery
2 network company's insurer shall cooperate with all insurers involved in the claim
3 coverage investigation to facilitate the exchange of information and shall immediately
4 provide upon request by directly involved parties or any insurer the precise times a
5 delivery network driver began and ended the delivery available period and delivery
6 service period on the delivery network company's digital network in the twelve-hour
7 period immediately preceding the accident and in the twelve-hour period immediately
8 following the accident. An insurer potentially providing the coverage required in this
9 section shall disclose upon request by any other insurer involved in the particular
10 claim, the applicable coverages, exclusions, and limits provided under any automobile
11 insurance maintained to satisfy the requirements of this section.

12 7. The insurer of a delivery network company providing coverage under subsections 1
13 and 2 shall assume primary liability for a claim when a dispute exists as to when the
14 delivery available period and the delivery service period began or ended and the
15 delivery network company does not have available, did not retain, or fails to provide
16 the information required by subsection 6.

17 **26.1-40.2-04. Exclusions in motor vehicle liability insurance policies.**

18 1. An authorized insurer that writes motor vehicle liability insurance in the state may
19 exclude any and all coverage and the duty to defend or indemnify for any injury or loss
20 occurring during the delivery available period and the delivery service period,
21 including:

- 22 a. Liability coverage for bodily injury and property damage;
- 23 b. Personal injury protection coverage under chapter 26.1-41;
- 24 c. Uninsured and underinsured motorist coverage;
- 25 d. Medical payments coverage;
- 26 e. Comprehensive physical damage coverage; and
- 27 f. Collision physical damage coverage.

28 2. This chapter does not:

- 29 a. Invalidate or limit an exclusion contained in a motor vehicle liability insurance
30 policy, including any insurance policy in use or approved for use which excludes
31 coverage for motor vehicles used for delivery or for any business use.

- 1 b. Invalidate, limit, or restrict an insurer's ability to underwrite any insurance policy.
- 2 c. Invalidate, limit, or restrict an insurer's ability to cancel and nonrenew policies.
- 3 3. A motor vehicle liability insurer that defends or indemnifies a claim against a delivery
- 4 network driver who is excluded under the terms of the insurer's policy may seek
- 5 recovery against the insurer providing coverage under subsections 1 and 2 of section
- 6 26.1-40.2-03 if the claim:
- 7 a. Occurs during the delivery available period or the delivery service period; and
- 8 b. Is excluded under the terms of its policy.

9 **26.1-40.2-05. Proof of insurance.**

- 10 1. A delivery network driver shall carry proof of insurance required at all times while using
- 11 a personal vehicle in connection with a digital network. If an accident occurs, a
- 12 delivery network driver shall, upon request, provide insurance coverage information to
- 13 a directly interested party, automobile insurer, and investigating law enforcement
- 14 officer.
- 15 2. The insurance coverage information may be displayed or provided in either paper or
- 16 electronic form. A delivery network driver shall, upon request, disclose to a directly
- 17 interested party, automobile insurer, and investigating law enforcement officer whether
- 18 the driver was operating during the delivery available period or the delivery service
- 19 period at the time of the accident.

20 **26.1-40.2-06. Authorized or eligible carrier.**

21 Insurance coverage required by this chapter may be obtained from an insurance company

22 licensed to transact business under title 26.1.

23 **26.1-40.2-07. Interaction with other law.**

24 This chapter does not limit the scope of federal or state law regarding delivery or transport

25 of goods. A delivery made under this chapter which is subject to such other law also must

26 comply with the requirements of that law. If there is a conflict between this chapter and another

27 law dealing with the delivery or transport of goods, the other law prevails.

28 **SECTION 2. AMENDMENT.** Section 39-34-01 of the North Dakota Century Code is

29 amended and reenacted as follows:

1 **39-34-01. Agent.**

2 The transportation network company or delivery network company must maintain a
3 registered agent with the secretary of state for service of process in this state.

4 **SECTION 3. AMENDMENT.** Section 39-34-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **39-34-02. Fare or fee charged for services.**

7 The transportation network company or delivery network company shall provide passengers
8 or customers with the applicable rates being charged and the option to receive an estimated
9 fare or fee before the passenger enters the transportation network company driver's vehicle or
10 before the customer finalizes the delivery request.

11 **SECTION 4. AMENDMENT.** Section 39-34-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-34-03. Transportation driver requirements.**

14 1. Before permitting an individual to act as a transportation network company driver or
15 delivery network company driver on its digital platform, the transportation network
16 company or delivery network company shall:

17 a. Require the individual to submit an application to the transportation network
18 company or delivery network company, which includes information regarding the
19 individual's address, age, driver's license, driving history, motor vehicle
20 registration, automobile liability insurance, and other information required by the
21 transportation network company or delivery network company;

22 b. Conduct, or have a third party conduct, a local and national criminal background
23 check for each applicant that must include:

24 (1) Multistate and multijurisdiction criminal records locator or other similar
25 commercial nationwide database with validation; and

26 (2) National sex offender registry database; and

27 c. Obtain and review a driving history research report for the individual.

28 2. The transportation network company or delivery network company may not permit an
29 individual to act as a transportation network company driver or delivery network
30 company driver on its digital platform who:

- 1 a. Has had more than three moving violations in the prior three-year period, or one
- 2 major violation in the prior three-year period, including attempting to evade the
- 3 police, reckless driving, or driving on a suspended or revoked license;
- 4 b. Has been convicted, within the past seven years, of driving under the influence of
- 5 drugs or alcohol, fraud, a sexual offense, use of a motor vehicle to commit a
- 6 felony, a crime involving property damage, theft, an act of violence, or an act of
- 7 terror;
- 8 c. Is a match in the national sex offender registry database;
- 9 d. Does not possess a valid driver's license;
- 10 e. Does not possess proof of registration for the motor vehicle used to provide
- 11 transportation network company or delivery network company services;
- 12 f. Does not possess proof of automobile liability insurance for the motor vehicle
- 13 used to provide transportation network company or delivery network company
- 14 services; or
- 15 g. Is not at least ~~twenty-one~~eighteen years of age.

16 **SECTION 5. AMENDMENT.** Section 39-34-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-34-04. Personally identifiable information.**

19 A transportation network company or delivery network company may not disclose any
20 personally identifiable information of a transportation network company passenger or delivery
21 network company customer, except pursuant to the publicly disclosed terms of the
22 transportation network company's or delivery network company's privacy policy. For any other
23 disclosure not governed by the privacy policy, the transportation network company or delivery
24 network company must obtain the passenger's consent before the company may disclose the
25 passenger's or customer's personally identifiable information.

26 **SECTION 6. AMENDMENT.** Section 39-34-06 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **39-34-06. Controlling authority.**

- 29 1. Notwithstanding any other provision of law, transportation network companies and
- 30 transportation network company drivers are governed exclusively by this chapter,

- 1 chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by
2 the insurance commissioner under chapter 26.1-40.1.
- 3 2. A political subdivision may not impose a tax on, or require a license for, a
4 transportation network company ~~or a~~ transportation network company driver, delivery
5 network company, or a delivery network company driver or subject a transportation
6 network company or delivery network company to the political subdivision's rate, entry,
7 operational, or other requirements.
- 8 3. This chapter may not be construed to limit the ability of a commercial service airport or
9 the governing body of a commercial service airport to enter an operating agreement
10 with a transportation network company which authorizes operational access to the
11 commercial service airport. An operating agreement entered under this subsection
12 may provide guidelines for entry, pick-up, drop-off, fees, and other airport operational
13 procedures required by the commercial service airport for the transportation network
14 company to be allowed operational access to the commercial service airport. As used
15 in this subsection, "commercial service airport" means a public airport that has at least
16 two thousand five hundred passenger boardings per calendar year and receives
17 scheduled passenger aircraft service.