

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED 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 and a new section to chapter 39-34 of
2 the North Dakota Century Code, relating to delivery network company insurance and classifying
3 a transportation network company driver as an independent contractor; and to amend and
4 reenact subsection 3 of section 26.1-40.1-01, section 26.1-40.1-03, subsection 1 of section
5 26.1-40.1-04, and sections 39-34-01, 39-34-02, 39-34-04, and 39-34-06 of the North Dakota
6 Century Code, relating to transportation network company insurance and transportation and
7 delivery company networks.

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

9 **SECTION 1. AMENDMENT.** Subsection 3 of section 26.1-40.1-01 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 3. "Engaged stage" means the time period from the moment a participating driver
12 accepts a ride request on the transportation network company's online-enabled
13 application or platform until the driver completes the transaction on the online-enabled
14 application or platform or until the ride is complete, whichever is later passengers
15 on-board stage begins.

16 **SECTION 2. AMENDMENT.** Section 26.1-40.1-03 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **26.1-40.1-03. Coverage Insurance coverage required when transportation network**
19 **company application is engaged until completion of ride when during the passenger has**
20 **exited the vehicle on-board stage.**

21 4. A transportation network company and any participating driver shall maintain
22 transportation network company insurance that provides for the following requirements that
23 apply to transportation network company insurance during the engaged stage and during the
24 passenger on-board stage.

1 ~~a.1.~~ Transportation network company liability insurance is primary and in the amount of
2 one million dollars for death, bodily injury, and property damage. The requirements for
3 the coverage required by this ~~subdivisions~~subsection may be satisfied by ~~any of the~~
4 following:

5 ~~(1)~~a. Transportation network company insurance maintained by a participating driver.

6 ~~(2)~~b. Transportation network company insurance maintained by a transportation
7 network company.

8 ~~(3)~~c. Any combination of ~~paragraphs 1 and 2~~subdivisions a and b.

9 ~~b.2.~~ Transportation network company insurance coverage provided under this section for
10 uninsured motorist coverage must meet the requirements under section 26.1-40-15.2,
11 which is primary coverage.

12 ~~e.3.~~ Transportation network company insurance coverage provided under this section for
13 underinsured motorist coverage must meet the requirements under section
14 26.1-40-15.3, which is primary coverage.

15 ~~d.4.~~ Transportation network company insurance coverage must provide primary personal
16 injury protection to drivers, passengers, and pedestrians under chapter 26.1-41.

17 ~~e.5.~~ The primary insurer, in the case of insurance coverage provided under ~~subdivision-~~
18 asubsection 1, has the sole duty to defend and indemnify the insured.

19 ~~f.6.~~ Coverage under a transportation network company insurance policy may neither be
20 dependent on a driver's personal automobile insurance policy carrier first denying a
21 claim nor a personal automobile insurance policy carrier being required to first deny a
22 claim.

23 ~~g.7.~~ If transportation network company insurance maintained by a participating driver to
24 fulfill the insurance obligations of this section has excluded coverage according to its
25 policy or ceased to exist, the transportation network company shall provide the
26 coverage required by this section beginning with the first dollar of a claim.

27 **SECTION 3. AMENDMENT.** Subsection 1 of section 26.1-40.1-04 of the North Dakota
28 Century Code is amended and reenacted as follows:

29 1. During the application on stage and during the engaged stage, the transportation
30 network company insurance must include:

- 1 a. Motor vehicle liability coverage that is primary coverage. The coverage must
- 2 include at least fifty thousand dollars per person and one hundred thousand
- 3 dollars per incident for death and bodily injury and at least twenty-five thousand
- 4 dollars for property damage.
- 5 b. Uninsured motorist coverage under section 26.1-40-15.2 which is primary
- 6 coverage.
- 7 c. Underinsured motorist coverage under section 26.1-40-15.3 which is primary
- 8 coverage.
- 9 d. Personal injury protection under chapter 26.1-41 which is primary coverage.

10 **SECTION 4.** Chapter 26.1-40.2 of the North Dakota Century Code is created and enacted
11 as follows:

12 **26.1-40.2-01. Definitions.**

- 13 1. "Delivery available period" means the period when a driver:
 - 14 a. Has logged on to a digital network and is available to receive requests to provide
 - 15 delivery services from a delivery network company;
 - 16 b. Is operating a personal vehicle; and
 - 17 c. Is not providing delivery services or operating in the delivery service period.
- 18 2. "Delivery network company" means a corporation, partnership, sole proprietorship, or
19 other entity that operates in the state and uses a digital network to connect a delivery
20 network company customer to a delivery network driver to provide delivery services. A
21 delivery network company may not be deemed to control, direct, or manage the
22 personal vehicle or delivery network drivers that connect to the delivery network
23 company's digital network, unless agreed to by written contract.
- 24 3. "Delivery network company customer" means a person that orders the delivery of
25 goods, where the delivery network driver delivers the goods at the direction of the
26 delivery network company customer.
- 27 4. "Delivery network driver" means an individual who provides delivery services through
28 a delivery network company's digital network using a personal vehicle.
- 29 5. "Delivery service period" means the period:

- 1 a. Beginning when a driver starts operating a personal vehicle en route to pick up a
2 good for a delivery as documented via a digital network controlled by a delivery
3 network company;
- 4 b. Continuing while the driver transports the requested delivery; and
- 5 c. Ending upon delivery of the requested good to:
 - 6 (1) The delivery network company customer or the last delivery network
7 company customer in a series of deliveries; or
 - 8 (2) A location designated by the delivery network company, including for
9 purposes of returning the good.

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

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

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

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

- 21 a. Used by a delivery network driver to provide delivery services via a digital
22 network; or
- 23 b. Owned, leased, or otherwise authorized for use by the delivery network driver.

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

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

- 27 1. The insurance coverage, including the types of coverage and the limits for each
28 coverage, the delivery network company provides while the driver uses a personal
29 vehicle in connection with a delivery network company's digital network; and
- 30 2. That the driver's automobile insurance policy might not provide any coverage during
31 the delivery available period, if it applies, or the delivery service period.

1 **26.1-40.2-03. Insurance requirements - Delivery network companies and delivery**
2 **network company drivers.**

- 3 1. A delivery network company shall ensure that during the delivery available period, if it
4 applies, and during the delivery service period, primary automobile liability insurance is
5 in place which recognizes the driver is a delivery network driver or that does not
6 exclude coverage for use of a personal vehicle to provide deliveries.
- 7 2. During the delivery service period and delivery available period, the delivery network
8 driver, delivery network company, or any combination of the two shall maintain:
- 9 a. Insurance that insures the driver for liability to third parties of not less than fifty
10 thousand dollars for damages arising out of bodily injury sustained by any one
11 person in an accident, of not less than one hundred thousand dollars for
12 damages arising out of bodily injury sustained by all persons injured in an
13 accident, and of not less than twenty-five thousand dollars for all damages arising
14 out of damage to or destruction of property in an accident;
- 15 b. Uninsured motorist coverage under section 26.1-40-15.2;
- 16 c. Underinsured motorist coverage under section 26.1-40-15.3; and
- 17 d. Personal injury protection under chapter 26.1-41.
- 18 3. If the insurance coverage maintained by a delivery network driver under subsections 1
19 and 2 has lapsed or does not provide the required coverage, insurance maintained by
20 the delivery network company must provide the coverage required by subsections 1
21 and 2 beginning with the first dollar of a claim and the insurance maintained by the
22 delivery network company has the duty to defend the claim.
- 23 4. Coverage under an automobile insurance policy maintained by the delivery network
24 company may not be dependent on another motor vehicle liability insurer first denying
25 a claim, or on another motor vehicle liability insurance policy being required to first
26 deny a claim.
- 27 5. Insurance coverage required by this section may be obtained from an insurance
28 company duly licensed to transact business under title 26.1 or by an eligible surplus
29 lines broker.
- 30 6. During a claim coverage investigation, a delivery network company or a delivery
31 network company's insurer shall cooperate with all insurers involved in the claim.

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

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

15 **26.1-40.2-04. Exclusions in motor vehicle liability insurance policies.**

- 16 1. An authorized insurer that writes motor vehicle liability insurance in the state may
17 exclude any and all coverage and the duty to defend or indemnify for any injury or loss
18 occurring during the delivery available period and the delivery service period,
19 including:
- 20 a. Liability coverage for bodily injury and property damage;
 - 21 b. Personal injury protection coverage under chapter 26.1-41;
 - 22 c. Uninsured and underinsured motorist coverage;
 - 23 d. Medical payments coverage;
 - 24 e. Comprehensive physical damage coverage; and
 - 25 f. Collision physical damage coverage.
- 26 2. This chapter does not:
- 27 a. Invalidate or limit an exclusion contained in a motor vehicle liability insurance
28 policy, including any insurance policy in use or approved for use which excludes
29 coverage for motor vehicles used for delivery or for any business use.
 - 30 b. Invalidate, limit, or restrict an insurer's ability to underwrite any insurance policy.
 - 31 c. Invalidate, limit, or restrict an insurer's ability to cancel and nonrenew policies.

1 3. A motor vehicle liability insurer that defends or indemnifies a claim against a delivery
2 network driver who is excluded under the terms of the insurer's policy may seek
3 recovery against the insurer providing coverage under subsections 1 and 2 of section
4 26.1-40.2-03 if the claim:

5 a. Occurs during the delivery available period or the delivery service period; and

6 b. Is excluded under the terms of its policy.

7 **26.1-40.2-05. Proof of insurance.**

8 1. A delivery network driver shall carry proof of insurance required at all times while using
9 a personal vehicle in connection with a digital network. If an accident occurs, a
10 delivery network driver shall, upon request, provide insurance coverage information to
11 a directly interested party, automobile insurer, and investigating law enforcement
12 officer.

13 2. The insurance coverage information may be displayed or provided in either paper or
14 electronic form. A delivery network driver shall, upon request, disclose to a directly
15 interested party, automobile insurer, and investigating law enforcement officer whether
16 the driver was operating during the delivery available period or the delivery service
17 period at the time of the accident.

18 **26.1-40.2-06. Authorized or eligible carrier.**

19 Insurance coverage required by this chapter may be obtained from an insurance company
20 licensed to transact business under title 26.1.

21 **26.1-40.2-07. Interaction with other law.**

22 This chapter does not limit the scope of federal or state law regarding delivery or transport
23 of goods. A delivery made under this chapter which is subject to such other law also must
24 comply with the requirements of that law. If there is a conflict between this chapter and another
25 law dealing with the delivery or transport of goods, the other law prevails.

26 **SECTION 5. AMENDMENT.** Section 39-34-01 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **39-34-01. Agent.**

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

1 **SECTION 6. AMENDMENT.** Section 39-34-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-34-02. Fare or fee charged for services.**

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

8 **SECTION 7. AMENDMENT.** Section 39-34-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **39-34-04. Personally identifiable information.**

11 A transportation network company or delivery network company may not disclose any
12 personally identifiable information of a transportation network company passenger or delivery
13 network company customer, except pursuant to the publicly disclosed terms of the
14 transportation network company's or delivery network company's privacy policy. For any other
15 disclosure not governed by the privacy policy, the transportation network company or delivery
16 network company must obtain the passenger's consent before the company may disclose the
17 passenger's or customer's personally identifiable information.

18 **SECTION 8. AMENDMENT.** Section 39-34-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **39-34-06. Controlling authority.**

- 21 1. Notwithstanding any other provision of law, transportation network companies and
22 transportation network company drivers are governed exclusively by this chapter,
23 chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by
24 the insurance commissioner under chapter 26.1-40.1.
- 25 2. A political subdivision may not impose a tax on, or require a license for, a
26 transportation network company ~~or a~~ transportation network company driver, delivery
27 network company, or a delivery network company driver or subject a transportation
28 network company or delivery network company to the political subdivision's rate, entry,
29 operational, or other requirements.
- 30 3. This chapter may not be construed to limit the ability of a commercial service airport or
31 the governing body of a commercial service airport to enter an operating agreement

1 with a transportation network company which authorizes operational access to the
2 commercial service airport. An operating agreement entered under this subsection
3 may provide guidelines for entry, pick-up, drop-off, fees, and other airport operational
4 procedures required by the commercial service airport for the transportation network
5 company to be allowed operational access to the commercial service airport. As used
6 in this subsection, "commercial service airport" means a public airport that has at least
7 two thousand five hundred passenger boardings per calendar year and receives
8 scheduled passenger aircraft service.

9 **SECTION 9.** A new section to chapter 39-34 of the North Dakota Century Code is created
10 and enacted as follows:

11 **Delivery network driver - Independent contractor.**

12 1. As used in this chapter:

13 a. "Delivery network company" has the same meaning as provided under section
14 26.1-40.2-01.

15 b. "Delivery network driver" has the same meaning as provided under section
16 26.1-40.2-01.

17 2. A delivery network driver is an independent contractor and not an employee of a
18 delivery network company if the delivery network company:

19 a. Enters an agreement with the delivery network driver that the delivery network
20 driver is an independent contractor and not an employee of the delivery network
21 company;

22 b. Does not unilaterally prescribe specific hours during which the delivery network
23 driver must be available to accept service requests submitted through the
24 delivery network company's digital network;

25 c. Does not prohibit the delivery network driver from engaging in outside
26 employment or performing services through other delivery network companies
27 except while the delivery network driver is engaged in performing services
28 through the delivery network company's digital network; and

29 3. A delivery network company may not terminate the contract of the delivery network
30 company driver for a driver's refusal to accept a specific delivery request.