

## **ARTICLE 4-11 RISK MANAGEMENT**

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### **CHAPTER 4-11-01 RISK MANAGEMENT MOTOR VEHICLE ACCIDENT REVIEW BOARD**

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#### **4-11-01-01. Definitions.**

For purposes of this chapter:

1. "Accident" means an unintended event involving a state-owned or state-leased vehicle which produces injury or damage. The word "injury" includes personal injury, death, or property damage.
2. "Board" means the risk management motor vehicle accident review board.
3. "Corrective actions" means corrective actions recommended by the department or board when an accident is classified as preventable. Recommendations may include:
  - a. Additional training be provided to the operator, such as driver training, defensive driving training, or emergency vehicle operational training;
  - b. Physical, eye, written, or operational examinations be given to the operator to identify problem areas relevant to the operator if a review of the accident indicates that the cause may have been due to an impairment;
  - c. Restricted operation of state-owned or state-leased vehicles on state business; and
  - d. Duty assignment not requiring operation of a vehicle on state business.
4. "Defensive driving concept" means driving that saves lives, time, and money in spite of the conditions and the actions of others.
5. "Department" means the department of transportation.
6. "Nonpreventable accident" means the operator acted reasonably to prevent the occurrence.
7. "Operator" means a state employee driving a state-owned or state-leased vehicle involved in an accident. "State employee" means every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.
8. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
9. "Preventable accident" means the operator did not act reasonably to prevent the occurrence.

10. "Property damage" includes injury to or destruction of tangible or intangible property.
11. "Reportable state fleet vehicle accident" means any accident that results in injury due to the operation of a state-owned or state-leased licensed motor vehicle.
12. "Significant property damage" includes any damage that renders the vehicle inoperable and damage of a nature or extent in which injury to an occupant might reasonably have occurred.

**History:** Effective May 1, 2000; amended effective January 1, 2012.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

#### **4-11-01-02. Purpose.**

The 1999 North Dakota legislative assembly established the board to review certain reportable state-owned or state-leased vehicle accidents to improve traffic safety and driver training and to reduce the number of traffic accidents.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

#### **4-11-01-03. Composition and responsibilities.**

1. Composition:
  - a. The board consists of five voting members. Of those five members, three are ex officio permanent members and two are members who serve two-year terms.
  - b. The three ex officio permanent board members are:
    - (1) The director of the department of transportation or the director's designee, who is chairperson.
    - (2) The director of the office of management and budget or the director's designee.
    - (3) The superintendent of the highway patrol or the superintendent's designee.
  - c. The two nonpermanent board members are at-large designees selected by the three ex officio permanent board members. Criteria for selection of the nonpermanent board members include the total number of miles a potential nonpermanent board member's agency's personnel operate state-owned or state-leased fleet vehicles and that agency's accident rates.
2. Responsibilities of the board include:
  - a. Reviewing accidents involving a state-owned or state-leased vehicle operated by a state employee which involve bodily injury or significant property damage and reviewing operator appeals of recommendations made by the department.
  - b. Adopting rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations.
  - c. An impartial review of the facts and application of the board's rules.
  - d. Taking a fair and objective vote on each matter before the board.
3. Responsibilities of the chairperson of the board include:

- a. Scheduling the board's meetings and notifying all participants. This includes notifying the operator and the operator's agency head of the date, time, and place the board will convene to review the accident involving the operator.
  - b. Directing all activities of the board and being responsible for receiving, preparing, presenting, and maintaining all of the records, reports, and other materials pertaining to the operation of the board.
  - c. Providing the operator and the operator's agency head with the board's written decision and recommendation of corrective action.
4. The department of transportation fleet services division will review all reportable state fleet motor vehicle accidents and report accidents of agencies not exempt from review by the board to the board if either or both of the following apply:
  - a. A preliminary review shows that the accident appears to have been preventable, using the definition of preventable accident under section 4-11-01-01 and the accident resulted in bodily injury or significant property damage.
  - b. A citation was issued to the operator of the state-owned or state-leased vehicle.
5. The department of transportation fleet services division will use forms approved by the board to provide information pertaining to the reportable state fleet motor vehicle accident subject to the board's review. Information contained on those forms must include a description of the accident, possible underlying causes of the accident, any immediate corrective action taken to prevent reoccurrence, suggested measures to prevent reoccurrence, and whether the operator has indicated that the operator will present written evidence concerning the accident.
6. The board will develop a form to record its decision. The form may be incorporated as a part of the form used by the department of transportation fleet services division to report an accident to be reviewed by the board. Information contained on the decision recording form must include the names of the board members reviewing the matter, a determination of whether the accident was preventable by the operator, the reasons the accident was determined preventable, the date of the decision, and the recommendation to be made to the operator's agency head.
7. The department will review all accidents that do not involve bodily injury or significant property damage to determine whether the accident was preventable and recommend corrective actions to the operator's agency head.
8. The board will review appeals from operators that object to any findings or recommendations made by the department.

**History:** Effective May 1, 2000; amended effective January 1, 2012.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

#### **4-11-01-04. Operating procedures.**

1. The board will meet on a quarterly basis, or at the call of the chairperson according to need.
2. No meeting will be convened unless three board members are present. An affirmative vote of at least three board members is required for board action or recommendation.
3. The board will afford the operator a reasonable opportunity to explain the circumstances surrounding the accident, including anything the operator believes contributed to its cause. The operator may present written evidence relative to the accident.

4. In making its decision, the board shall use the definitions of preventable accident and nonpreventable accident in section 4-11-01-01. All decisions must be made without prejudice or bias and must be based solely on facts presented through reports submitted or testimony given to the board. Decisions must be based on general guidelines of the defensive driving concept as defined in section 4-11-01-01.
5. If the board finds an accident preventable, it shall recommend corrective actions to the head of the agency employing the operator. The recommendations may include the corrective actions in section 4-11-01-01. It is the employing agency head's responsibility to decide what corrective actions will be implemented.
6. Board records must contain the decision and be kept on file with the department for a period of three years following the year in which the accident occurred.
7. The board shall issue to the operator and the operator's agency head a notification, in writing, of the board's decision within seven business days of the date of the decision.
  - a. This notification must advise the operator of the right to request reconsideration of the decision.
  - b. If the accident is classified as preventable and the board recommends any type of corrective action as a result, the notification must include:
    - (1) The classification;
    - (2) The recommended corrective actions; and
    - (3) The operator's right to request the board to reconsider its decision.
8. An operator who disagrees with the original classification or recommended corrective actions has the right to request reconsideration by the board. Reconsideration procedures include:
  - a. Filing a written notice of the request for reconsideration with the director of the risk management division of the office of management and budget within fourteen business days after the notification was mailed to the operator. The request must include any pertinent new information the operator would like the board to consider and a brief statement of the grounds for reconsideration.
  - b. If the director of risk management determines the additional information provided by the operator warrants reconsideration by the board, the additional information must be reviewed at a subsequent board meeting. The operator has the right to appear at the meeting and present evidence or witnesses who can offer relevant information.
  - c. The operator will be paid the operator's regular salary, will be reimbursed for travel expenses, and may not be required to take any leave for time needed to assist the board in its review. Any costs associated with corrective actions must be borne by the operator's employing agency.
  - d. The board reserves the right to change its classification or recommendation based on any additional information the operator presents in the request for reconsideration.
  - e. If the director of risk management determines the additional information provided with the request for reconsideration does not support reconsideration, the original decision by the board is final and the matter will not be scheduled for reconsideration.

**History:** Effective May 1, 2000; amended effective January 1, 2012.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14

**4-11-01-05. Board designation as loss control committee.**

The board is a state agency loss control committee under North Dakota Century Code section 32-12.2-12. All of the board's records, meetings, and current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony contained in that section.

**History:** Effective May 1, 2000.

**General Authority:** NDCC 28-32-02, 32-12.2-14

**Law Implemented:** NDCC 32-12.2-14