

Introduced by

1 A BILL for an Act to create and enact three new sections to chapter 26.1-40 of the North Dakota  
2 Century Code, relating to the limitation on recovery for noneconomic loss for a person driving  
3 without liability insurance, self-insurance, and out-of-state automobile accidents and policies; to  
4 amend and reenact sections 24-02-01.1, 26.1-23.1-01, 26.1-40-02, 26.1-40-16, 26.1-40-17,  
5 39-04-05, 39-04-06, and 39-05-20.3 of the North Dakota Century Code, relating to references to  
6 mandatory no-fault motor vehicle insurance; and to repeal chapter 26.1-41 of the North Dakota  
7 Century Code, relating to mandatory no-fault motor vehicle insurance coverage.

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

9 **SECTION 1. AMENDMENT.** Section 24-02-01.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **24-02-01.1. Department of transportation - Creation - Transfer of functions.** The  
12 department of transportation is established as an executive department of this state.

13 Transferred to and vested in the department of transportation are the functions, powers, and  
14 duties of the ~~following governmental agencies:~~

15 1. ~~The~~ highway department, the highway commissioner, and the chief engineer,  
16 including titles 24 and 39, chapter 49-17.1, and sections 49-10.1-17, 49-17.2-27,  
17 and 55-01-01;

18 2. ~~The, and the~~ motor vehicle department and the registrar of motor vehicles,  
19 including title 39, chapter 57-40.3, and ~~sections~~ section 26.1-23-03 and  
20 ~~26.1-41-02.~~

21 **SECTION 2. AMENDMENT.** Section 26.1-23.1-01 of the North Dakota Century Code  
22 is amended and reenacted as follows:

23 **26.1-23.1-01. Government self-insurance pools - Regulation - Reinsurance.**

- 1           1. Any two or more entities that have united to self-insure against their legal liability  
2           under chapter 32-12.1 or any state agency that unites with another state agency or  
3           political subdivision, or both, to self-insure against their legal liabilities are subject  
4           to the provisions of this chapter with the exception of a city and its park district  
5           established pursuant to chapter 40-49. Government self-insurance pools may only  
6           provide coverage of the following types for pool members, their officers,  
7           employees, and agents:
- 8           a. Casualty insurance, including general, public officials, and professional liability  
9           coverages.
- 10          b. Automobile insurance including motor vehicle liability insurance coverage,  
11          ~~security for motor vehicles owned or operated as required by chapter 26.1-41,~~  
12          and protection against other liability and laws associated with the ownership  
13          of motor vehicles and automobile physical damage coverages.
- 14          c. Property insurance, including inland marine coverage, money and securities  
15          coverage, and extra expense coverage. However, this subdivision does not  
16          authorize government self-insurance pools to write those types of insurance  
17          coverages offered by the state fire and tornado fund under the provisions of  
18          chapter 26.1-22 as they existed on December 31, 1988.
- 19          d. Other coverages authorized by the commissioner and necessary to a pool's  
20          membership.
- 21          2. A government self-insurance pool may not expose itself to loss on any single risk  
22          or hazard in an amount exceeding ten percent of the amount of its admitted assets  
23          unless the pool obtains excess insurance or reinsurance with insurance companies  
24          approved for such business by the insurance commissioner.

25           **SECTION 3. AMENDMENT.** Section 26.1-40-02 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **26.1-40-02. Cancellation of policy - Exclusive reasons.**

- 28           1. ~~No~~ An insurer may not cancel a policy except for the following reasons:
- 29           a. Nonpayment of premium.
- 30           b. Because the motor vehicle operator's license or motor vehicle registration of  
31           either the named insured or any other operator who resides in the same

- 1 household as the named insured or who customarily operates a motor vehicle  
2 insured under the policy has been suspended, rescinded, canceled, or  
3 revoked during the policy period, or, if the policy is a renewal, during its policy  
4 period or for one hundred eighty days immediately preceding its effective  
5 date. This subdivision does not apply and the insurer may not cancel a policy  
6 when the operator whose license is suspended or revoked is excluded from  
7 coverage under the policy. The insurer shall notify the named insured of the  
8 possibility of excluding an operator whose license has been suspended or  
9 revoked ~~prior to~~ before cancellation of the policy. ~~When an operator whose~~  
10 ~~license is suspended or revoked is excluded from coverage under the policy~~  
11 ~~covering a secured motor vehicle, the owner of the motor vehicle who gives~~  
12 ~~expressed or implied consent to the operator to use the motor vehicle is not~~  
13 ~~relieved of liability under subsection 5 of section 26.1-41-02.~~
- 14 c. Fraud or material misrepresentation made by or with the knowledge of any  
15 insured in obtaining the policy, continuing the policy, or in presenting a claim  
16 under the policy.
- 17 d. The insured motor vehicle is:
- 18 (1) So mechanically defective that its operation might endanger public  
19 safety;
- 20 (2) Used in carrying passengers for hire or compensation; provided,  
21 however, that the use of an automobile for a car pool is not use of an  
22 automobile for hire or compensation;
- 23 (3) Used in the transportation of flammables or explosives or for an illegal  
24 purpose;
- 25 (4) An authorized emergency vehicle; or
- 26 (5) Altered by an insured during the policy period so as to substantially  
27 increase the risk.
- 28 e. The named insured moves to a state where the insurer is not licensed to do  
29 business.
- 30 f. Failure to pay dues or fees when payment of the dues or fees is a prerequisite  
31 to obtaining or continuing automobile insurance coverage.

- 1           g. A determination by the commissioner that the continuation of the policy would  
2           place the insurer in violation of the law or would be hazardous to the interests  
3           of policyholders, creditors, or the public.
- 4           2. During the policy period ~~no~~ a modification of automobile physical damage  
5           coverage, except coverage for loss caused by collision, by which provision is made  
6           for the application of a deductible amount not exceeding one hundred dollars is  
7           ~~deemed~~ not a cancellation of the coverage or of the policy.
- 8           3. Renewal of a policy does not constitute a waiver or estoppel with respect to  
9           grounds for cancellation which existed before the effective date of the renewal.

10           **SECTION 4. AMENDMENT.** Section 26.1-40-16 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **26.1-40-16. Exclusion of named persons - Restrictive endorsements.** By written  
13 agreement with the named insured, a private passenger automobile insurance policy covering  
14 an automobile or other motor vehicle registered or principally garaged in this state may exclude  
15 a named individual, individuals, or class of individuals from coverage. The policy may contain a  
16 restrictive endorsement reducing the limits of liability, uninsured motorist coverage,  
17 underinsured motorist coverage, ~~basic no-fault benefits coverage,~~ or collision coverage while  
18 the vehicle is operated by a named individual or class of individuals. However, if the policy  
19 does provide liability coverage to a person named in a restrictive endorsement, the coverage  
20 may not be less than the minimum provided under ~~section~~ sections 26.1-40-15.2, ~~section~~  
21 ~~26.1-40-15.3, subsection 2 of section 26.1-41-04, and section~~ 39-16.1-11. ~~If the policy~~  
22 ~~excludes a named individual, individuals, or class of individuals from all coverage and the~~  
23 ~~named insured expressly or impliedly consents to the operation of a secured motor vehicle by~~  
24 ~~the excluded party, the named insured is not relieved of personal liability as provided by~~  
25 ~~subsection 5 of section 26.1-41-02.~~

26           **SECTION 5. AMENDMENT.** Section 26.1-40-17 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28           **26.1-40-17. Establishment of primary and excess automobile liability coverages**  
29 **in certain instances.**

- 30           1. When an automobile insurance policy ~~which~~ that includes ~~only~~ solely automobile  
31 liability coverage, uninsured motorist coverage, underinsured motorist coverage,

1           ~~and~~ automobile medical payments coverage, ~~and basic or optional excess no-fault~~  
2           ~~benefits~~ is in force for anyone engaged in the business of selling, repairing,  
3           servicing, storing, leasing, or parking motor vehicles and the owner of the vehicles  
4           loans, rents, or leases a vehicle to any other person or organization and the vehicle  
5           is involved in an accident out of which bodily injury or property damage arises, the  
6           following is applicable:

- 7           4.    a.    If no other automobile insurance policy is in force at the time of the accident  
8                   for the person or organization to whom the vehicle was loaned, rented, or  
9                   leased, the coverage provided by the motor vehicle owner's automobile policy  
10                  extends to the borrower, rentee, or lessee in the event the owner's automobile  
11                  insurance policy extends coverage to the borrower, rentee, or lessee.
- 12           ~~2.~~   b.    If another automobile insurance policy is in force for the person or  
13                   organization to whom the vehicle was loaned, rented, or leased, any coverage  
14                   provided by the motor vehicle owner's automobile insurance policy is solely  
15                   excess coverage ~~only but~~ and is limited, ~~however,~~ by the terms of the owner's  
16                   applicable automobile insurance policy. The policy afforded the person or  
17                   organization to whom the vehicle was loaned, rented, or leased is primary.
- 18           2.    Any policy provisions at variance with this section must be interpreted so as to  
19                  comply with this section.

20           **SECTION 6.** A new section to chapter 26.1-40 of the North Dakota Century Code is  
21           created and enacted as follows:

22           **Self-insurance.**

- 23           1. A person may self-insure instead of providing compulsory insurance coverage on a  
24           motor vehicle.
- 25           2. To qualify for self-insurance, the person must file in satisfactory form:
- 26                   a. A continuing undertaking by that person or other appropriate person to pay  
27                   the liabilities covered by motor vehicle liability and uninsured motorist  
28                   insurance.
- 29                   b. Evidence that appropriate provision exists for the prompt and efficient  
30                   administration of all claims, benefits, and obligations provided by motor  
31                   vehicle liability and uninsured motorist insurance.

1           c. Evidence that reliable financial arrangements, deposits, or commitments exist  
2                     providing assurance for payment of the liabilities covered by motor vehicle  
3                     liability and uninsured motorist insurance substantially equivalent to those  
4                     afforded by an insurance policy.

5           3. The commissioner may adopt rules to implement this section.

6           **SECTION 7.** A new section to chapter 26.1-40 of the North Dakota Century Code is  
7 created and enacted as follows:

8           **Motor vehicle liability insurance - Extraterritorial provision.**

9           1. Motor vehicle liability insurance applies to the amounts that the owner is legally  
10                    obligated to pay as damages because of accidental bodily injury and accidental  
11                    property damage arising out of the ownership or operation of a motor vehicle, if the  
12                    accident occurs in the United States or its possessions or in Canada. Motor  
13                    vehicle liability insurance must afford limits of liability not less than those required  
14                    under the financial responsibility laws of this state. Customary terms and  
15                    conditions applicable to motor vehicle liability insurance apply.

16           2. If the accident occurs outside this state but in the United States or its possessions  
17                    or in Canada and if the limits of liability of the financial responsibility or compulsory  
18                    insurance laws of the applicable jurisdiction exceed the limits of liability of the  
19                    financial responsibility laws of North Dakota, the motor vehicle liability insurance is  
20                    deemed to comply with the limits of liability of the laws of the applicable jurisdiction.

21           **SECTION 8.** A new section to chapter 26.1-40 of the North Dakota Century Code is  
22 created and enacted as follows:

23           **No noneconomic loss damages if no liability insurance.** In an action against a  
24                    person who has obtained a valid policy of liability insurance to recover because of an accidental  
25                    bodily injury arising out of the ownership or operation in this state of a motor vehicle with the  
26                    liability coverage, the person may not be assessed damages for noneconomic loss for bodily  
27                    injury in favor of a party who has at least one prior unrelated conviction under section 39-08-20  
28                    and who was operating a motor vehicle owned by that party at the time of the injury without a  
29                    valid policy of liability insurance in order to respond to damages for liability arising out of the  
30                    ownership, maintenance, or use of that motor vehicle.

1           **SECTION 9. AMENDMENT.** Section 39-04-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **39-04-05. Grounds for refusing registration.**

4           1. The department shall refuse registration or any transfer of registration upon any of  
5 the following grounds:

6           ~~4.~~ a. That the application contains any false or fraudulent statement or that the  
7 applicant has failed to furnish required information or reasonable additional  
8 information requested by the department or that the applicant is not entitled to  
9 registration of the vehicle under this chapter.

10          ~~2.~~ b. That the vehicle is mechanically unfit or unsafe to be operated or moved upon  
11 the highways.

12          ~~3.~~ c. That the department has reasonable ground to believe that the vehicle is a  
13 stolen or embezzled vehicle or that the granting of registration would  
14 constitute a fraud against the rightful owner or other person having valid lien  
15 upon the vehicle.

16          ~~4.~~ d. That the registration of the vehicle stands suspended or revoked for any  
17 reason as provided in the motor vehicle laws of this state.

18          ~~5.~~ e. That the required fee has not been paid.

19          ~~6.~~ f. When any sales tax or motor vehicle excise tax, properly due, has not been  
20 paid.

21          ~~7.~~ g. For failure to maintain ~~security for payment of basic no-fault benefits and the~~  
22 ~~liabilities covered under compulsory motor vehicle liability~~ insurance on a  
23 motor vehicle ~~as required by chapter 26.1-41.~~

24          ~~8.~~ h. For failure to provide proof of payment of the heavy vehicle use tax due, as  
25 required, to the internal revenue service.

26          ~~9.~~ i. When the vehicle is operating in violation of the provisions of the international  
27 registration plan or the international fuel tax agreement.

28          2. The director shall promulgate rules and regulations for refusal of registration of  
29 vehicles not equipped as required by chapter 39-21.

30           **SECTION 10. AMENDMENT.** Section 39-04-06 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **39-04-06. When registration rescinded or suspended.**

2           1. The department shall rescind or suspend the registration of a vehicle for any of the  
3           following:

4           ~~4.~~ a. When the department determines a vehicle is unsafe or unfit to be operated or  
5           is not equipped as required by law.

6           ~~2.~~ b. When the person to whom the registration card or registration number plates  
7           have been issued makes or permits any unlawful use of the same or permits  
8           the use thereof by a person or on a vehicle not entitled thereto.

9           ~~3.~~ c. When the department finds that a vehicle is registered in accordance with a  
10           reciprocity agreement, arrangement, or declaration and the vehicle is  
11           operated in violation of the agreement.

12           ~~4.~~ d. When the department determines that a motor vehicle ~~is~~ does not ~~covered by~~  
13           ~~security for payment of basic no-fault benefits and the liabilities covered under~~  
14           have compulsory motor vehicle liability insurance as required by chapter  
15           26-1-44.

16           ~~5.~~ e. When the department is satisfied that the registration or registration card,  
17           plate, or permit was fraudulently or erroneously issued.

18           ~~6.~~ f. When a registered vehicle has been dismantled or wrecked.

19           ~~7.~~ g. When a registration card, registration plate, or permit is knowingly displayed  
20           upon a vehicle other than the one for which issued.

21           ~~8.~~ h. When the department determines that the owner has committed any offense  
22           under this chapter involving the registration or the registration card, plate, or  
23           permit to be suspended or rescinded.

24           ~~9.~~ i. When the purchaser or transferee of a vehicle fails to present the endorsed  
25           and assigned certificate of title to the department for transfer and make  
26           application for a new certificate of title within thirty days as required by section  
27           39-05-17.

28           ~~10.~~ j. When the department determines a vehicle is operating in violation of the  
29           provisions of the international fuel tax agreement.

- 1           2. Any registration suspended for any ~~of the above reasons~~ ground listed in  
2           subsection 1 must be restored upon compliance with the laws governing vehicle  
3           registration.
- 4           3. Whenever a check is returned to the department for want of payment the  
5           department shall rescind the registration of the vehicle covered by the check. Any  
6           registration rescinded for want of payment of a check must be restored upon  
7           payment of the registration fee and a reasonable cost not to exceed twenty dollars  
8           for the collection of the check. If a returned check has a value exceeding one  
9           thousand dollars, the department shall also collect an additional fee of one percent  
10          of the value of the check.

11          **SECTION 11. AMENDMENT.** Section 39-05-20.3 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13          **39-05-20.3. Grounds for refusing certificate of title.** The department ~~shall~~ may not  
14          issue a certificate of title or transfer a certificate of title upon any of the following grounds:

- 15          1. When the application contains any false or fraudulent statements or when the  
16          applicant has failed to furnish required information or reasonable additional  
17          information requested by the department or when the applicant is not entitled to the  
18          issuance of a certificate of title under this chapter.
- 19          2. When the vehicle is mechanically unfit or unsafe to be operated or moved upon the  
20          highways.
- 21          3. When the department has reason to believe the vehicle is a stolen or embezzled  
22          vehicle or the granting of title would constitute a fraud against the rightful owner or  
23          other person having valid lien upon the vehicle.
- 24          4. When the certificate of title is suspended or revoked for any reason as provided in  
25          the motor vehicle laws of this state.
- 26          5. When the required fee has not been paid.
- 27          6. When any sales tax or motor vehicle excise tax, properly due, has not been paid.
- 28          7. For failure to provide ~~security for payment of basic no-fault benefits and the~~  
29          ~~liabilities covered under~~ compulsory motor vehicle ~~liability~~ insurance on a motor  
30          vehicle ~~as required by chapter 26-1-44.~~

- 1           **SECTION 12. REPEAL.** Chapter 26.1-41 of the North Dakota Century Code is
- 2 repealed.