

Introduced by

1 A BILL for an Act to amend and reenact sections 26.1-41-01, 26.1-41-09, 26.1-41-11,
2 26.1-41-12, and 26.1-41-19 of the North Dakota Century Code, relating to no-fault motor vehicle
3 insurance; and to repeal sections 26.1-41-16 and 26.1-41-17 of the North Dakota Century
4 Code, relating to subrogation and equitable allocation of losses.

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

6 **SECTION 1. AMENDMENT.** Section 26.1-41-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-41-01. Definitions.** As used in this chapter:

- 9 1. "Accidental bodily injury" means bodily injury, sickness, or disease, including death
10 resulting therefrom, arising out of the operation of a motor vehicle; that is in motion
11 or an injury that is caused by another vehicle and which is accidental as to the
12 person claiming basic or optional excess no-fault benefits.
- 13 2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental
14 bodily injury. The maximum amount of basic no-fault benefits payable for all
15 economic loss incurred and resulting from accidental bodily injury to any one
16 person as the result of any one accident may not exceed thirty thousand dollars,
17 regardless of the number of persons entitled to the benefits or the number of basic
18 no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may
19 not exceed ~~one hundred fifty dollars per week per person prorated for any lesser~~
20 ~~period for work loss or survivors' income loss,~~ or three thousand five hundred
21 dollars for funeral, cremation, and burial expenses.
- 22 3. "Basic no-fault insurer" means an insurer or a qualified self-insurer.
- 23 4. "Bus" means:

- 1 a. Any motor vehicle owned by a public or governmental agency and operated
2 for the transportation of children to or from school or privately owned and
3 operated for compensation for the transportation of children to or from school.
- 4 b. Any motor vehicle owned by a charitable, religious, educational, or
5 governmental corporation or organization designed for carrying more than ten
6 passengers and used for the transportation of persons not for compensation.
- 7 c. Any motor vehicle owned by a political subdivision and operated as part of a
8 public transit system in which all or a portion of the costs of operation are
9 subsidized by the political subdivision or the federal government.
- 10 5. "Dependent survivors" means the surviving spouse of a deceased injured person if
11 residing in the deceased's household at the time of the deceased's death, and
12 other persons receiving support from the deceased injured person at the time of
13 the deceased's death which would qualify them as dependents of the deceased for
14 federal income tax purposes under the federal Internal Revenue Code. The
15 dependency of a surviving spouse terminates upon remarriage.
- 16 6. "Disability" means the inability to engage in substantially all of the injured person's
17 usual and customary daily activities.
- 18 7. "Economic loss" means medical expenses, rehabilitation expenses, ~~work loss,~~
19 ~~replacement services loss, survivors' income loss, survivors' replacement services~~
20 ~~loss,~~ and funeral, cremation, and burial expenses.
- 21 8. "Injured person" means a person who sustains accidental bodily injury.
- 22 9. "Medical expenses" means ~~reasonable~~ usual and customary charges in excess of
23 two hundred fifty dollars incurred for reasonable and necessary medical, surgical,
24 x-ray, dental, prosthetic, ambulance, hospital, or professional nursing services or
25 services for remedial treatment and care ~~rendered in accordance with a recognized~~
26 ~~religious healing method. Medical expenses do.~~ Usual and customary charges
27 may not exceed the charges permitted under the workforce safety and insurance
28 fee schedule in effect at the time of the service. [Usual and customary charges for
29 chiropractic, massage therapy, acupuncture, or physical therapy for an individual in
30 an accident may not exceed five hundred dollars.] The term does not include that:

- 1 a. The portion of the charge for a room in any hospital, clinic, convalescent or
2 nursing home, extended care facility, or any similar facility in excess of the
3 reasonable and customary charge for semiprivate accommodations unless
4 intensive care is medically needed.
- 5 b. Charges for drugs sold without a prescription.
- 6 c. Charges for experimental treatments.
- 7 d. Charges for medically unproven treatments.
- 8 [e. Charges for chiropractic, massage therapy, and acupuncture.]
- 9 10. "Motor vehicle" means a vehicle having more than three load-bearing wheels, of a
10 kind required to be registered under the laws of this state relating to motor
11 vehicles, designed primarily for operation upon the public streets, roads, and
12 highways, and driven by power other than muscular power, and includes a trailer
13 drawn by or attached to such a vehicle.
- 14 11. "Noneconomic loss" means pain, suffering, inconvenience, and other nonpecuniary
15 damage recoverable under the tort law of this state.
- 16 12. "Occupying" means to be in or upon a motor vehicle ~~or engaged in the immediate~~
17 ~~act of entering into or alighting from the motor vehicle.~~
- 18 13. "Operation of a motor vehicle" means operation, ~~maintenance,~~ or use of a motor
19 vehicle as a vehicle. Operation of a motor vehicle does not include ~~conduct within~~
20 ~~the course of a business of repairing, servicing, or otherwise~~ maintaining a motor
21 ~~vehicles unless the injury occurs off the business premises,~~ vehicle or conduct in
22 the course of loading and unloading the vehicle ~~unless the injury occurs while~~
23 ~~occupying it.~~
- 24 14. "Owner" means the person in whose name the motor vehicle has been registered.
25 If ownership has been transferred, but the registration record has not been
26 changed, "owner" means the person, other than a lienholder, to whom ownership
27 has been transferred. If no registration is in effect at the time of an accident
28 involving the motor vehicle, "owner" means the person, other than a lienholder,
29 who holds the legal title to the motor vehicle. If the motor vehicle is the subject of a
30 security agreement with the debtor having the right to possession, a lease with an
31 option to purchase with the lessee having the right to possession, or a lease with a

- 1 term of six months or more with the lessee having the right to possession, "owner"
2 means the debtor or lessee.
- 3 15. "Pedestrian" means any person not occupying any vehicle designed to be driven or
4 drawn by power other than muscular power.
- 5 16. "Rehabilitation expense" means the cost of a procedure or treatment for
6 rehabilitation or a course of rehabilitative occupational training if the procedure,
7 treatment, or training is reasonable and appropriate for the particular case, its cost
8 is reasonable in relation to its probable rehabilitative effects, and it is likely to
9 contribute substantially to medical or occupational rehabilitation.
- 10 17. "Relative" means any of the following residing in the same household as the
11 owner: a person related to the owner by blood, marriage, or adoption, or a foster
12 child. A person resides in the same household if that person usually makes a
13 home in the same family unit, even though temporarily living elsewhere.
- 14 ~~18. "Replacement services loss" means expenses not exceeding fifteen dollars per day~~
15 ~~in obtaining ordinary and necessary services from others not members of the~~
16 ~~injured person's household in lieu of those that the injured person would have~~
17 ~~performed had the injured person not been injured, not for income but for the~~
18 ~~benefit of the injured person or the injured person's household. Replacement~~
19 ~~services loss does not include any loss after the death of an injured person.~~
- 20 ~~19.~~ "Secured motor vehicle" means a motor vehicle with respect to which the security
21 required by this chapter was in effect at the time of its involvement in the accident
22 resulting in accidental bodily injury.
- 23 ~~20.~~ 19. "Secured person" means the owner, operator, or occupant of a secured motor
24 vehicle, and any other person legally responsible for the acts or omissions of the
25 owner, operator, or occupant.
- 26 ~~21.~~ 20. "Serious Injury" means an accidental bodily injury which results in death,
27 dismemberment, serious and permanent disfigurement or disability beyond sixty
28 days, or medical expenses in excess of [~~two~~ four thousand ~~five hundred~~ dollars].
29 [For the purposes of determining whether the amount of medical expenses
30 exceeds the two thousand five hundred dollar threshold, expenses for diagnostic
31 testing are not included.] An injured person who is furnished the services in

1 subsection 9 without charge or at less than the ~~average reasonable~~ usual and
2 customary charge for the service in this state is deemed to have sustained a
3 serious injury if a court determines that the ~~fair and reasonable~~ usual and
4 customary value of the services exceeds [~~two four thousand five hundred~~ dollars].

5 22. ~~"Survivors' income loss" means loss sustained after an injured person's death by~~
6 ~~dependent survivors during their dependency and consisting of the loss of the~~
7 ~~contributions they would have received for their support from the decedent out of~~
8 ~~income from work the decedent would normally have performed had the decedent~~
9 ~~not died.~~

10 23. ~~"Survivors' replacement services loss" means expenses, not to exceed fifteen~~
11 ~~dollars per day after the injured person's death, by dependent survivors in~~
12 ~~obtaining ordinary and necessary services from others not members of the~~
13 ~~decedent's household in lieu of the services the decedent would have performed~~
14 ~~not for income but for the benefit of the decedent's household.~~

15 24. ~~"Work loss" means eighty five percent of loss of income from work an injured~~
16 ~~person who would normally be employed in gainful activity during the period of~~
17 ~~disability would have performed had the person not been injured, reduced by any~~
18 ~~income from substitute work actually performed by the injured person or by income~~
19 ~~the injured person would have earned in available appropriate substitute work that~~
20 ~~the injured person was capable of performing but unreasonably failed to undertake.~~
21 ~~Work loss does not include any loss after death of an injured person.~~

NOTE: The bracketed material in subsection 9 is in the alternative. A decision as to whether to limit chiropractic, massage therapy, acupuncture, or physical therapy to \$500 or prohibit charges for chiropractic, massage therapy, and acupuncture needs to be made by the committee. As to the bracketed material in subsection 20, a decision to raise the serious injury threshold from \$2,500 to \$4,000 or exclude diagnostic testing expenses needs to be made by the committee.

22 **SECTION 2. AMENDMENT.** Section 26.1-41-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **26.1-41-09. Payment of basic and optional excess no-fault benefits.**

25 1. Basic and optional excess no-fault benefits are payable monthly for economic loss
26 sustained by an injured person or dependent survivors or incurred on the injured
27 person's behalf by the injured person's spouse, relatives, or guardian. A basic

1 no-fault insurer may pay basic or optional excess no-fault benefits when due to the
2 above persons who it believes have sustained or incurred the economic loss or at
3 its option to the person rendering, for a charge, the services for which the benefits
4 are payable. If the injured person dies, a basic no-fault insurer may pay the
5 benefits due directly to those entitled to the benefits without the appointment of a
6 personal representative and unless a court directs otherwise, ~~may pay all benefits~~
7 ~~for survivors' income loss or replacement services loss to the surviving spouse for~~
8 ~~the use and benefit of all dependent survivors.~~ A basic no-fault insurer's payments
9 made in good faith in accordance with this chapter discharges its liability to the
10 extent of the payments unless the basic no-fault insurer has been notified in writing
11 of the claim of some other person prior to the making of any of the payments.

12 2. Basic and optional excess no-fault benefits are overdue if not paid within thirty
13 days after the basic no-fault insurer receives reasonable proof of the fact and the
14 amount of loss sustained, except that the basic no-fault insurer may accumulate
15 claims for periods not exceeding one month, and the benefits are not overdue if
16 paid within twenty days after the period of accumulation. If reasonable proof is not
17 supplied as to the entire claim, the amount supported by reasonable proof is
18 overdue if not paid within thirty days after the proof is received by the basic no-fault
19 insurer. Any part or all of the remainder of the claim that is later supported by
20 reasonable proof is overdue if not paid within thirty days after proof is received by
21 the basic no-fault insurer. Payment is deemed made on the date of mailing. All
22 overdue payments must bear interest at the rate of eighteen percent per annum.

23 3. A basic no-fault insurer is not required to pay for services billed more than forty-five
24 days after the date of treatment.

25 **SECTION 3. AMENDMENT.** Section 26.1-41-11 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **26.1-41-11. Mental and physical examinations.**

28 1. Whenever the mental or physical condition of a person is material to any claim that
29 has been or may be made for past or future basic or optional excess no-fault
30 benefits, the person shall submit to mental or physical examination by a physician
31 designated by the basic no-fault insurer at a reasonably convenient location. Basic

1 no-fault insurers are authorized to include reasonable provisions of this nature in
2 policies providing basic or excess no-fault benefits.

3 2. If a person refuses to submit to a mental or physical examination, a court at the
4 request of the insurer may enter an order requiring the person to submit to the
5 examination. If the court finds that the individual failed to appear for the
6 examination without good cause, the court shall order the insured to reimburse the
7 insurer for any cancellation charges for the examination and reasonable attorney's
8 fees and costs incurred by the insurer in petitioning the court. The insurer may
9 suspend or terminate benefits pending compliance with this request.

10 **SECTION 4. AMENDMENT.** Section 26.1-41-12 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **26.1-41-12. Discovery of facts about an injured person.**

- 13 1. Every employer or claimant, if a written request is made by a basic no-fault insurer
14 against whom a claim has been made, shall furnish forthwith, in a form approved
15 by the insurance commissioner, a sworn statement of the earnings, since the time
16 of the accidental bodily injury and for a twelve-month period before the injury, of
17 the person upon whose injury the claim is based.
- 18 2. Every physician, coroner or medical officer, hospital, clinic, or other medical
19 institution providing, before or after an accidental bodily injury upon which a claim
20 for basic or optional excess no-fault benefits is based, any products, services, or
21 accommodations in relation to the injury, or in relation to a condition claimed to be
22 connected with the injury, if requested in writing to do so by the basic no-fault
23 insurer against whom the claim has been made, shall:
- 24 a. Promptly furnish a written report of the history, condition, treatment, and dates
25 and costs of treatment.
- 26 b. Permit the inspection and copying of its records regarding the history,
27 condition, treatment, and dates and costs of treatment.
- 28 c. Promptly furnish autopsy reports.
- 29 3. In the event of any dispute regarding a basic no-fault insurer's right to discovery of
30 facts about an injured person's earnings or about history, condition, treatment, and

1 dates and costs of such treatment, a court of record may enter an order for such
2 discovery as justice requires.

3 4. A person may not charge more than twenty dollars for the first twenty-five pages
4 and twenty-five cents per page for every page beyond twenty-five for providing a
5 copy of medical records provided to a basic no-fault insurer pursuant to this
6 chapter. This charge includes any administrative fee, retrieval fee, and postage
7 expense.

8 **SECTION 5. AMENDMENT.** Section 26.1-41-19 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **26.1-41-19. Limitation of actions.**

11 1. If no basic or optional excess no-fault benefits have been paid for loss, an action
12 for the benefits may not be commenced ~~not~~ later than ~~two years~~ one year after the
13 injured person suffers the loss and either knows, or in the exercise of reasonable
14 diligence should know, that the loss was caused by the accident, or ~~not~~ later than
15 ~~four~~ two years after the accident, whichever is earlier. If basic or optional excess
16 no-fault benefits have been paid for loss, an action for recovery of further benefits
17 for the loss by either the same or another claimant may not be commenced ~~not~~
18 later than ~~four~~ two years after the last payment of benefits.

19 2. If no basic or optional excess no-fault benefits have been paid to the decedent or
20 dependent survivors, an action for benefits for ~~survivors' income loss and~~
21 ~~replacement services loss and~~ funeral and burial expenses may be commenced
22 not later than two years after the death or six years after the accident from which
23 death results, whichever is earlier. ~~If survivors' income loss and replacement~~
24 ~~services loss benefits have been paid to any dependent survivor, an action for~~
25 ~~recovery of further survivors' income loss or replacement services loss benefits by~~
26 ~~either the same or another claimant may be commenced not later than six years~~
27 ~~after the last payment of benefits. If basic or optional excess no-fault benefits have~~
28 ~~been paid for loss suffered by an injured person before the injured person's death~~
29 ~~resulting from the injury, an action for recovery of survivors' income loss or~~
30 ~~replacement services loss benefits may be commenced not later than two years~~
31 ~~after the death or six years after the last payment of benefits, whichever is earlier.~~

1 3. ~~Except as~~ Unless subsection 1 or 2 prescribes a longer period, an action by a
2 claimant on an assigned claim which has been timely presented may be
3 commenced not later than sixty days after the claimant received written notice of
4 rejection of the claim by the basic no-fault insurer to which it was assigned.

5 4. The time period limitations prescribed in this section govern all actions for basic
6 and optional excess no-fault benefits under this chapter notwithstanding any
7 limitation prescribed elsewhere in the laws of this state.

8 **SECTION 6. REPEAL.** Sections 26.1-41-16 and 26.1-41-17 of the North Dakota
9 Century Code are repealed.