

Sixty-eighth
Legislative Assembly
of North Dakota

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 sections 39-34-01, 39-34-02, ~~39-34-03~~, 39-34-04, and 39-34-06 of the North Dakota
5 Century Code, relating to transportation and delivery company networks.

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

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

9 **26.1-40.2-01. Definitions.**

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

11 ~~a. Has logged on to a digital network and is available to receive requests to provide~~
12 ~~delivery services from a delivery network company;~~

13 ~~b. Is operating a personal vehicle; and~~

14 ~~c. Is not providing delivery services or operating in the delivery service period.~~

15 ~~2.~~ "Delivery network company" means a corporation, partnership, sole proprietorship, or
16 other entity that operates in the state and uses a digital network to connect a delivery
17 network company customer to a delivery network driver to provide delivery services. A
18 delivery network company may not be deemed to control, direct, or manage the
19 personal vehicle or delivery network drivers that connect to the delivery network
20 company's digital network, unless agreed to by written contract.

21 ~~3.2.~~ "Delivery network company customer" means a person that orders the delivery of
22 goods, where the delivery network driver delivers the goods at the direction of the
23 delivery network company customer.

1 | 4.3. "Delivery network driver" means an individual who provides delivery services through
2 | a delivery network company's digital network using a personal vehicle.

3 | 5.4. "Delivery service period" means the period:

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

7 | b. Continuing while the driver transports the requested delivery; and

8 | c. Ending upon delivery of the requested good to:

9 | (1) The delivery network company customer or the last delivery network
10 | company customer in a series of deliveries; or

11 | (2) A location designated by the delivery network company, including for
12 | purposes of returning the good.

13 | 6.5. "Delivery services" means the fulfillment of delivery requests made by a delivery
14 | network company customer through a digital network, including the pickup of any good
15 | and the delivery of the good to a delivery network company customer by a delivery
16 | network driver. Delivery services may include a series of deliveries to different
17 | customers.

18 | 7.6. "Digital network" means any online-enabled application, software, website, or system
19 | offered or used by a delivery network company which enables deliveries with delivery
20 | network drivers.

21 | 8.7. "Personal injury protection" means basic no-fault benefits as defined under section
22 | 26.1-41-01.

23 | 9.8. "Personal vehicle" means a vehicle that is:

24 | a. Used by a delivery network driver to provide delivery services via a digital
25 | network; or

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

27 | **26.1-40.2-02. Required disclosures.**

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

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

6 **26.1-40.2-03. Insurance requirements - Delivery network companies and delivery**
7 **network company drivers.**

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

- 1 5. Insurance coverage required by this section may be obtained from an insurance
2 company duly licensed to transact business under title 26.1 or by an eligible surplus
3 lines broker.
- 4 6. During a claim coverage investigation, a delivery network company or a delivery
5 network company's insurer shall cooperate with all insurers involved in the claim
6 coverage investigation to facilitate the exchange of information and shall immediately
7 provide upon request by directly involved parties or any insurer the precise times a
8 delivery network driver began and ended the ~~delivery available period and~~ delivery
9 service period on the delivery network company's digital network in the twelve-hour
10 period immediately preceding the accident and in the twelve-hour period immediately
11 following the accident. An insurer potentially providing the coverage required in this
12 section shall disclose upon request by any other insurer involved in the particular
13 claim, the applicable coverages, exclusions, and limits provided under any automobile
14 insurance maintained to satisfy the requirements of this section.
- 15 7. The insurer of a delivery network company providing coverage under subsections 1
16 and 2 shall assume primary liability for a claim when a dispute exists as to when the
17 delivery ~~available period and the delivery~~ service period began or ended and the
18 delivery network company does not have available, did not retain, or fails to provide
19 the information required by subsection 6.

20 **26.1-40.2-04. Exclusions in motor vehicle liability insurance policies.**

- 21 1. An authorized insurer that writes motor vehicle liability insurance in the state may
22 exclude any and all coverage and the duty to defend or indemnify for any injury or loss
23 occurring during the delivery ~~available period and the delivery~~ service period,
24 including:
- 25 a. Liability coverage for bodily injury and property damage;
26 b. Personal injury protection coverage under chapter 26.1-41;
27 c. Uninsured and underinsured motorist coverage;
28 d. Medical payments coverage;
29 e. Comprehensive physical damage coverage; and
30 f. Collision physical damage coverage.
- 31 2. This chapter does not:

- 1 a. Invalidate or limit an exclusion contained in a motor vehicle liability insurance
- 2 policy, including any insurance policy in use or approved for use which excludes
- 3 coverage for motor vehicles used for delivery or for any business use.
- 4 b. Invalidate, limit, or restrict an insurer's ability to underwrite any insurance policy.
- 5 c. Invalidate, limit, or restrict an insurer's ability to cancel and nonrenew policies.
- 6 3. A motor vehicle liability insurer that defends or indemnifies a claim against a delivery
- 7 network driver who is excluded under the terms of the insurer's policy may seek
- 8 recovery against the insurer providing coverage under subsections 1 and 2 of section
- 9 26.1-40.2-03 if the claim:
- 10 a. Occurs during the delivery ~~available period or the delivery~~ service period; and
- 11 b. Is excluded under the terms of its policy.

12 **26.1-40.2-05. Proof of insurance.**

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

23 **26.1-40.2-06. Authorized or eligible carrier.**

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

25 licensed to transact business under title 26.1.

26 **26.1-40.2-07. Interaction with other law.**

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

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

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

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

1 **SECTION 2. AMENDMENT.** Section 39-34-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-34-01. Agent.**

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

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

8 **39-34-02. Fare or fee charged for services.**

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

13 ~~— **SECTION 4. AMENDMENT.** Section 39-34-03 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~— **39-34-03. Transportation driver requirements.**~~

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

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

24 ~~— b. Conduct, or have a third party conduct, a local and national criminal background~~
25 ~~check for each applicant that must include:~~

26 ~~— (1) Multistate and multijurisdiction criminal records locator or other similar~~
27 ~~commercial nationwide database with validation; and~~

28 ~~— (2) National sex offender registry database; and~~

29 ~~— c. Obtain and review a driving history research report for the individual.~~

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

19 **SECTION 4. AMENDMENT.** Section 39-34-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **39-34-04. Personally identifiable information.**

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

29 **SECTION 5. AMENDMENT.** Section 39-34-06 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-34-06. Controlling authority.**

2 1. Notwithstanding any other provision of law, transportation network companies and
3 transportation network company drivers are governed exclusively by this chapter,
4 chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by
5 the insurance commissioner under chapter 26.1-40.1.

6 2. A political subdivision may not impose a tax on, or require a license for, a
7 transportation network company ~~or a~~ transportation network company driver, delivery
8 network company, or a delivery network company driver or subject a transportation
9 network company or delivery network company to the political subdivision's rate, entry,
10 operational, or other requirements.

11 3. This chapter may not be construed to limit the ability of a commercial service airport or
12 the governing body of a commercial service airport to enter an operating agreement
13 with a transportation network company which authorizes operational access to the
14 commercial service airport. An operating agreement entered under this subsection
15 may provide guidelines for entry, pick-up, drop-off, fees, and other airport operational
16 procedures required by the commercial service airport for the transportation network
17 company to be allowed operational access to the commercial service airport. As used
18 in this subsection, "commercial service airport" means a public airport that has at least
19 two thousand five hundred passenger boardings per calendar year and receives
20 scheduled passenger aircraft service.

21 **SECTION 6.** A new section to chapter 39-34 of the North Dakota Century Code is created
22 and enacted as follows:

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

24 1. As used in this chapter:

25 a. "Delivery network company" has the same meaning as provided under section
26 26.1-40.2-01.

27 b. "Delivery network driver" has the same meaning as provided under section
28 26.1-40.2-01.

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

- 1 a. Enters an agreement with the delivery network driver that the delivery network
2 driver is an independent contractor and not an employee of the delivery network
3 company;
4 b. Does not unilaterally prescribe specific hours during which the delivery network
5 driver must be available to accept service requests submitted through the
6 delivery network company's digital network;
7 c. Does not prohibit the delivery network driver from engaging in outside
8 employment or performing services through other delivery network companies
9 except while the delivery network driver is engaged in performing services
10 through the delivery network company's digital network; and
11 d. May not terminate the contract of the delivery network company driver for a
12 driver's refusal to accept a specific delivery service request.