

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1440
(Representatives D. Ruby, Kasper, Ostlie, Schobinger, Tveit, Vigessaa)
(Senators Klein, Luick, Rust, Wobbema)

AN ACT to create and enact chapter 26.1-40.2 and a new section to chapter 39-34 of the North Dakota Century Code, relating to delivery network company insurance and classifying a transportation network company driver as an independent contractor; and to amend and reenact subsection 3 of section 26.1-40.1-01, section 26.1-40.1-03, subsection 1 of section 26.1-40.1-04, and sections 39-34-01, 39-34-02, 39-34-04, and 39-34-06 of the North Dakota Century Code, relating to transportation network company insurance and transportation and delivery company networks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

- a.1. Transportation network company liability insurance is primary and in the amount of one million dollars for death, bodily injury, and property damage. The requirements for the coverage required by this ~~subdivision~~ subsection may be satisfied by any of the following:
 - (1) a. Transportation network company insurance maintained by a participating driver.
 - (2) b. Transportation network company insurance maintained by a transportation network company.
 - (3) c. Any combination of ~~paragraphs 1 and 2~~ subdivisions a and b.
- b.2. Transportation network company insurance coverage provided under this section for uninsured motorist coverage must meet the requirements under section 26.1-40-15.2, which is primary coverage.
- c.3. Transportation network company insurance coverage provided under this section for underinsured motorist coverage must meet the requirements under section 26.1-40-15.3, which is primary coverage.
- d.4. Transportation network company insurance coverage must provide primary personal injury protection to drivers, passengers, and pedestrians under chapter 26.1-41.

- e.5. The primary insurer, in the case of insurance coverage provided under ~~subdivision~~
subsection 1, has the sole duty to defend and indemnify the insured.
- f.6. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.
- g.7. If transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has excluded coverage according to its policy or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

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

1. During the application on stage and during the engaged stage, the transportation network company insurance must include:
 - a. Motor vehicle liability coverage that is primary coverage. The coverage must include at least fifty thousand dollars per person and one hundred thousand dollars per incident for death and bodily injury and at least twenty-five thousand dollars for property damage.
 - b. Uninsured motorist coverage under section 26.1-40-15.2 which is primary coverage.
 - c. Underinsured motorist coverage under section 26.1-40-15.3 which is primary coverage.
 - d. Personal injury protection under chapter 26.1-41 which is primary coverage.

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

26.1-40.2-01. Definitions.

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

- a. Beginning when a driver starts operating a personal vehicle en route to pick up a good for a delivery as documented via a digital network controlled by a delivery network company;
 - b. Continuing while the driver transports the requested delivery; and
 - c. Ending upon delivery of the requested good to:
 - (1) The delivery network company customer or the last delivery network company customer in a series of deliveries; or
 - (2) A location designated by the delivery network company, including for purposes of returning the good.
6. "Delivery services" means the fulfillment of delivery requests made by a delivery network company customer through a digital network, including the pickup of any good and the delivery of the good to a delivery network company customer by a delivery network driver. Delivery services may include a series of deliveries to different customers.
7. "Digital network" means any online-enabled application, software, website, or system offered or used by a delivery network company which enables deliveries with delivery network drivers.
8. "Personal injury protection" means basic no-fault benefits as defined under section 26.1-41-01.
9. "Personal vehicle" means a vehicle that is:
 - a. Used by a delivery network driver to provide delivery services via a digital network; or
 - b. Owned, leased, or otherwise authorized for use by the delivery network driver.

26.1-40.2-02. Required disclosures.

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

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

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

1. A delivery network company shall ensure that during the delivery available period, if it applies, and during the delivery service period, primary automobile liability insurance is in place which recognizes the driver is a delivery network driver or that does not exclude coverage for use of a personal vehicle to provide deliveries.
2. During the delivery service period and delivery available period, the delivery network driver, delivery network company, or any combination of the two shall maintain:
 - a. Insurance that insures the driver for liability to third parties of not less than fifty thousand dollars for damages arising out of bodily injury sustained by any one person in an accident, of not less than one hundred thousand dollars for damages arising out of bodily injury sustained by all persons injured in an accident, and of not less than twenty-five

thousand dollars for all damages arising out of damage to or destruction of property in an accident;

- b. Uninsured motorist coverage under section 26.1-40-15.2;
 - c. Underinsured motorist coverage under section 26.1-40-15.3; and
 - d. Personal injury protection under chapter 26.1-41.
3. If the insurance coverage maintained by a delivery network driver under subsections 1 and 2 has lapsed or does not provide the required coverage, insurance maintained by the delivery network company must provide the coverage required by subsections 1 and 2 beginning with the first dollar of a claim and the insurance maintained by the delivery network company has the duty to defend the claim.
 4. Coverage under an automobile insurance policy maintained by the delivery network company may not be dependent on another motor vehicle liability insurer first denying a claim, or on another motor vehicle liability insurance policy being required to first deny a claim.
 5. Insurance coverage required by this section may be obtained from an insurance company duly licensed to transact business under title 26.1 or by an eligible surplus lines broker.
 6. During a claim coverage investigation, a delivery network company or a delivery network company's insurer shall cooperate with all insurers involved in the claim coverage investigation to facilitate the exchange of information and shall immediately provide upon request by directly involved parties or any insurer the precise times a delivery network driver began and ended the delivery available period and delivery service period on the delivery network company's digital network in the twelve-hour period immediately preceding the accident and in the twelve-hour period immediately following the accident. An insurer potentially providing the coverage required in this section shall disclose upon request by any other insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained to satisfy the requirements of this section.
 7. The insurer of a delivery network company providing coverage under subsections 1 and 2 shall assume primary liability for a claim when a dispute exists as to when the delivery available period and the delivery service period began or ended and the delivery network company does not have available, did not retain, or fails to provide the information required by subsection 6.

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

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

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

26.1-40.2-05. Proof of insurance.

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

26.1-40.2-06. Authorized or eligible carrier.

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

26.1-40.2-07. Interaction with other law.

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

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

39-34-01. Agent.

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

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

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

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

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

39-34-04. Personally identifiable information.

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

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

39-34-06. Controlling authority.

1. Notwithstanding any other provision of law, transportation network companies and transportation network company drivers are governed exclusively by this chapter, chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by the insurance commissioner under chapter 26.1-40.1.
2. A political subdivision may not impose a tax on, or require a license for, a transportation network company or ~~a~~, transportation network company driver, delivery network company, or a delivery network company driver or subject a transportation network company or delivery network company to the political subdivision's rate, entry, operational, or other requirements.
3. This chapter may not be construed to limit the ability of a commercial service airport or the governing body of a commercial service airport to enter an operating agreement with a transportation network company which authorizes operational access to the commercial service airport. An operating agreement entered under this subsection may provide guidelines for entry, pick-up, drop-off, fees, and other airport operational procedures required by the commercial service airport for the transportation network company to be allowed operational access to the commercial service airport. As used in this subsection, "commercial service airport" means a public airport that has at least two thousand five hundred passenger boardings per calendar year and receives scheduled passenger aircraft service.

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

Delivery network driver - Independent contractor.

1. As used in this chapter:
 - a. "Delivery network company" has the same meaning as provided under section 26.1-40.2-01.
 - b. "Delivery network driver" has the same meaning as provided under section 26.1-40.2-01.
2. A delivery network driver is an independent contractor and not an employee of a delivery network company if the delivery network company:
 - a. Enters an agreement with the delivery network driver that the delivery network driver is an independent contractor and not an employee of the delivery network company;
 - b. Does not unilaterally prescribe specific hours during which the delivery network driver must be available to accept service requests submitted through the delivery network company's digital network;
 - c. Does not prohibit the delivery network driver from engaging in outside employment or performing services through other delivery network companies except while the delivery

network driver is engaged in performing services through the delivery network company's digital network; and

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1440.

House Vote: Yeas 89 Nays 0 Absent 5

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State