

2023 HOUSE TRANSPORTATION

HB 1440

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1440
2/2/2023

A bill relating to delivery network company insurance and relating to transportation and delivery company networks.

Vice Chairman Grueneich opened the hearing at 9:19AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. **Members absent:** none.

Discussion Topics:

- Insurance coverage for commercial use
- Delivery network companies
- Proposed amendment 23.0957.01001
- Committee vote

Chairman D. Ruby verbally introduced the bill in support and proposed an amendment 23.0957.01001 (#18791).

Dennis Pathroff, Attorney with GA Group representing American Property Casualty Association, testified verbally in support.

Johnny Palsgraaf, General Counsel with North Dakota Insurance Department, verbally testified in support.

Vice Chairman Grueneich closed the hearing at 9:47AM.

Representative Murphy moved the amendment 23.0957.01001.

Representative Dakane seconded the motion.

Dennis Pathroff, Attorney for the GA Group representing American Property Casualty Association, answered questions from the committee.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y

Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion carried 14-0-0

Representative Murphy moved to adopt amendment in section 4 striking “21” and replacing with “18”.

Representative Christensen seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion carried 14-0-0

Representative Murphy moved a Do Pass as Amended.

Representative Dakane seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y

Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	Y

Motion carried 14-0-0

Representative Frelich is the bill carrier.

Additional written testimony:

Jaclyn Hall, North Dakota Association for Justice, testimony in support #18741.

Dustin Gawrylow, Managing Director with North Dakota Watchdog Network, testimony in support #18728.

Anna Powell, Manager of Government Relations with DoorDash, neutral testimony #18748.

Chairman D. Ruby adjourned at 9:57AM.

Mary Brucker, Committee Clerk

February 2, 2023

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 29

Page 6, replace lines 1 through 12 with:

"SECTION 1. 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:

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- (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:

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- 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:

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- 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.

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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.

Page 7, line 29, overstrike "twenty-one" and insert immediately thereafter "eighteen"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1440: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1440 was placed on the Sixth order on the calendar.

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 29

Page 6, replace lines 1 through 12 with:

"SECTION 1. 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."

Page 7, line 29, overstrike "twenty-one" and insert immediately thereafter "eighteen"

Renumber accordingly

2023 SENATE INDUSTRY AND BUSINESS

HB 1440

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1440
3/15/2023

A bill relating to delivery network company insurance and classifying a transportation network company driver as an independent contractor; and relating to transportation network company insurance and transportation and delivery company networks.
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9:00 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Transportation companies
- Insurance coverage
- Personal vehicles
- Independent contractors

9:01 AM Representative Dan Ruby, District 38 introduced HB 1440, and proposed two amendments #25232, LC 23.0957.02001 and #25233, LC 23.0957.02002, and testified in favor.

9:31 AM Don Larson, Lobbyist for Uber Technologies, testified in favor of HB 1440. No written testimony.

9:40 AM Lisa Feldner, Lobbyist, DoorDash, testified in favor. No written testimony.

9:41 AM Mike Rud, Lobbyist, ND Retail Association, testified in favor. No written testimony.

9:48 AM Andrea Pfennig, Director of Government Affairs, Greater ND Chamber, testified in favor of HB 1440. No written testimony.

9:51 AM Johnny Palsgraaf, General Counsel, ND Insurance Department, testified in favor. No written testimony.

9:57 AM Steve Becher, Executive Director, Professional Insurance Agents of ND, testified neutral. No written testimony.

10:00 AM Representative Ruby answered questions from the committee.

Additional written testimony:

Brooke Kelley, #24965

Ross Lien, #25149

Kelley R. Foxx, #25167

10:05 AM Chairman D. Larsen adjourned.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1440
3/21/2023

A bill relating to delivery network company insurance and classifying a transportation network company driver as an independent contractor; and relating to transportation network company insurance and transportation and delivery company networks.

2:54 PM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

2:57 PM Chairman D. Larsen recessed the meeting.

3:14 PM Chairman D. Larsen returned from recess.

3:14 PM Committee discussion on combining two separate amendments. LC 23.0957.02001 and LC # 23.095702002. (#26826, #26827)

3:17 PM Senator Barta moved to adopt an amendment to HB 1440. # LC 23.0957.02003. Senator Klein seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0 DO PASS TO AMEND HB 1440.

3:19 PM Senator Boehm moved to DO PASS AS AMENDED HB 1440.

Senator Kessel seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0 DO PASS AS AMENDED HB 1440.

Senator D. Larsen will carry the bill.

3:21 PM Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

March 21, 2023

AG
3-21-23
(1-3)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

Page 1, line 1, after "26.1-40.2" insert "and a new section to chapter 39-34"

Page 1, line 2, after "insurance" insert "and classifying a transportation network company driver as an independent contractor"

Page 1, line 2, after "reenact" insert "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"

Page 1, line 3, remove "39-34-03,"

Page 1, after line 3 insert "transportation network company insurance and"

Page 1, after line 5, insert:

"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 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.

- e.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.

AG
3-21-23
(2-3)

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."

Page 6, remove lines 11 through 30

Page 7, remove lines 1 through 15

Page 8, after line 17, insert:

"**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."

Alt
3-21-23
(3-3)

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1440, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1440 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "26.1-40.2" insert "and a new section to chapter 39-34"

Page 1, line 2, after "insurance" insert "and classifying a transportation network company driver as an independent contractor"

Page 1, line 2, after "reenact" insert "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"

Page 1, line 3, remove "39-34-03,"

Page 1, after line 3 insert "transportation network company insurance and"

Page 1, after line 5, insert:

"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 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.

- e-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.
- e-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 1~~ 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."

Page 6, remove lines 11 through 30

Page 7, remove lines 1 through 15

Page 8, after line 17, insert:

"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."

Renumber accordingly

TESTIMONY

HB 1440

HB 1440 - Testimony - Dustin Gawrylow, North Dakota Watchdog Network (#266)

Mr. Chairman and members of the committee,

I rise to support this bill, it appears to normalize food delivery and ride share insurance law - hopefully both can be covered under the same addendum to the law.

One suggestion, create a protection for all food and parcel delivery drivers using their personal cars regardless of whether they are on a delivery app or work for the restaurant or store directly.

When I was in college running pizzas around town, there were no apps, and us drivers always worried about if we were or were not covered.

If there is a way to just allow all delivery drivers using personal vehicles to be covered by the same addendum as rideshare drivers, I think that would be the ideal situation.

House Transportation
Jaclyn Hall
Executive Director
North Dakota Association for Justice
HB 1440

Chairman Ruby and members of the House Judiciary Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today, I am urging you to vote a DO Pass on HB 1440 as amended.

The North Dakota Association for Justice is comprised of attorneys who practice in the courts. We represent all areas of the law and our mission is to ensure everyone gets access to due process and to preserve the 7th Amendment of the Constitution. One of our areas we practice in is personal injury and wrongful death.

The amended version of HB1440 creates a delivery transport model like the passenger transport model created a few sessions ago for passenger transport companies. By using the NCOIL model, HB1440 will provide oversight and coverage for delivery drivers.

Without this framework, many delivery drivers find they are not covered by insurance in the event of an accident. Sometimes, these drivers are unaware they do not have proper coverage. If a driver uses their vehicle and travels for more miles for business used than for pleasure in a month, they will lose personal coverage without a business use rider or commercial coverage. Because of this, many insurance agencies will not provide coverage to these individuals who works for these types of companies.

In the event of an accident and the delivery driver does not have coverage, the claim falls on the victim. In the last year, many accidents and even a wrongful death have occurred without proper coverage. HB1440 will address and remove this issue.

NDAJ supports HB1440 and asks the committee to consider an emergency clause on the bill. This will ensure these individuals are insured sooner rather than later. By ensuring these drivers have proper coverage, the cost does not fall back onto the victim and increase premiums.

Thank you for the opportunity to provide testimony today. If you have any questions, please contact me at the email address and phone number below.

Jaci Hall
NDAJ
jaclyn@ndaj.org
701-663-3916



February 2, 2023

Chair Ruby and Members of the Transportation Committee,

My name is Anna Powell and I am the Manager of Government Relations for DoorDash. I am submitting comments on HB 1440 relating to delivery network company insurance. DoorDash supports industry-wide insurance standards, but has concerns with the proposed bill. We hope there can be continued discussion on a few provisions of the bill and look forward to sharing more feedback and suggested improvements with you.

Of particular concern is the requirement that delivery platforms maintain insurance coverage during the period when workers are logged on to the app but not performing delivery (the “application on stage”). On the DoorDash platform, there is no commitment to work during this period since Dashers can reject any delivery offer that they receive while logged on. This also creates a significant fraud risk: it would be easy for someone to get platform-provided insurance coverage by simply turning on the app as they do their normal commute or personal travel even if they never intend to accept any deliveries through the platform. We believe the coverage of the application on stage should be removed or revised to mitigate fraud risk.

We also have concerns about directly extending certain requirements applicable to rideshare drivers to delivery workers given the difference in the service being provided. For example, we believe that requiring delivery workers to be at least 18 years old – rather than 21 – is more appropriate since they are transporting food and groceries rather than transporting people.

Our policy team is currently drafting suggested edits that I will share with you and the bill sponsors separately. Thank you for your time and please reach out with any questions.

Anna Powell

Manager, Government Relations - NW

DoorDash

anna.powell@doordash.com

(360) 589-1516

23.0957.01001
Title.

Prepared by the Legislative Council staff for
Representative D. Ruby
February 1, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1440

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 29

Page 6, replace lines 1 through 12 with:

"SECTION 1. 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 non-renew 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."

Renumber accordingly



**Testimony of
American Property Casualty Insurance Association
North Dakota Senate – Industry and Business Committee
Hearing on House Bill 1440 – Delivery Network Companies
March 15, 2023**

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA members write 61.6 percent of all auto insurance sold in North Dakota, representing nearly \$430 million dollars in direct written premium. On behalf of our members, we offer this testimony in support of HB 1440 as passed in the House, and in opposition to any amendment that would remove the “Delivery Available Period” from the model.

Within the last decade, Delivery Network Companies (DNC), or platforms have formed to facilitate deliveries of various goods by individuals using their personal cars. These delivery services have become essential services for some consumers and have been an important part of the economy since the onset of the pandemic. While individuals using their personal vehicles to make deliveries is not new, there can be insurance implications.

The National Conference of Insurance Legislators (NCOIL) has developed a model law providing clear insurance requirements for DNC’s and the drivers who use their personal vehicle to make deliveries for companies such as Amazon, Grubhub, Drizly, DoorDash and Uber Eats. The NCOIL Delivery Network Company Model Act provides an effective framework for state legislation that is similar to the framework provided for Transportation Network Companies (TNC), but provides a separate law for DNCs, which is necessary to address the differences in risk between transporting people versus goods. The model was developed and supported by a broad group of stakeholders, including DNCs and insurers who provide auto insurance coverage for the DNC’s.

As passed by the House, House Bill 1440 conforms with the NCOIL model, requiring bodily injury and property damage coverage to third parties with minimums of \$50,000 for one person; \$100,000 for all persons; and \$25,000 for property damage be provided via a policy that either specifically provides coverage for delivery, or does not exclude delivery. The DNC must ensure that primary vehicle liability insurance coverage is in place during the delivery period — either by the company, the driver, or both. If coverage provided by the driver lapses, or does not exist, then the DNC must provide the coverage.

As is the case with the NCOIL TNC model, HB 1440 defines two activity periods:

- “Delivery Available Period” – When the driver is logged on to a digital network; is available to receive requests to provide delivery services from a delivery network company; but is very narrowly crafted to apply only when the driver is actually driving or “operating” a personal vehicle. The way that DNC drivers accept assignments varies by platform, some get requests immediately, and are able to accept them, while on the move, others accept blocks of time as opposed to specific deliveries that could be accepted days or weeks in advance. This definition recognizes that exposure occurs only when a driver accepts assignments while actually driving the vehicle.

- “Delivery Service Period” – As was the case with the “pre-arranged ride” period in the TNC model, the “Delivery Service Period” begins when the driver starts en route to pick up the delivery, or series of deliveries, continues through pick up of the items and ends when the last delivery is completed.

APCIA has a long history of supporting sharing economy innovations and has played a leading role in developing model legislation for TNC’s, Peer-To- Peer(P2P) Car Sharing and now DNC’s. On behalf of our members, we urge the committee to pass HB 1440 as passed in the House and oppose to any amendment that would remove the “Delivery Available Period” from the model.



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March 14, 2023

The Honorable Doug Larsen, Chairman

The Honorable Greg Kessel, Vice Chair

Members of the North Dakota Senate Committee on Industry and Business

RE: Letter in support of HB 1440 – March 15, 2023 Hearing

Dear Chairman Larsen and Members of the Industry and Business Committee,

The National Association of Mutual Insurance Companies (NAMIC) membership includes more than 1,400 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write over \$1.5 billion in annual premiums in the state. In North Dakota, we have 202 member companies, including 6 domiciled companies, which underwrite 89% of homeowners and 46% of auto insurance coverage.

NAMIC writes to urge the Committee to pass HB 1440 as currently written, which outlines regulatory framework for Delivery Network Companies (DNCs) operating in North Dakota.

The language in this bill, which is model legislation from the National Conference of Insurance Legislators (NCOIL) is the result of collaborative work amongst legislators, the insurance industry, trade organizations and others to come to the best possible outcome. NAMIC is supportive of passing the bill in its current form as it closely mirrors the NCOIL model.



NAMIC believes it is important to note that we feel strongly that language surrounding the “delivery available period” must remain in the bill. This language helps to clarify which insurance (the driver’s personal or the DNC who employs the driver) covers the driver during that period. Removing this language will create confusion for all parties involved and would likely lead to litigation if and when claims are filed.

For these reasons and others, NAMIC is happy to support HB 1440 as it is currently written. We hope the committee will strongly consider supporting the passage of this important legislation in its current form. Thank you for your time and consideration.

Respectfully,

NAMIC Regional Vice President, Midwest



Maplebear Inc. d/b/a Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

March 15, 2023

The Honorable Douglas Larsen
Chair
Senate Industry and Business Committee
North Dakota Legislative Assembly
600 E Boulevard Ave
State Capitol
Bismarck, ND 58505-0601

Re: Instacart Written Testimony, Amend, HB 1440 (Ruby)

Dear Chair Larsen, Vice Chair Kessel and Members of the Senate Industry and Business Committee,

I am writing to thank you for the opportunity to provide comment on HB 1440. Respectfully, we recommend the Committee amend this bill before advancing it.

Instacart is the leading grocery technology company in North America and works with grocers and retailers to transform how people shop. Instacart makes it possible for people to get the groceries they need from the retailers they love, and for hundreds of thousands of Instacart shoppers to earn by picking, packing and delivering orders on their own flexible schedule.

Instacart is generally supportive of efforts to modernize legal frameworks that aim to sensibly regulate entities, products and services, as long as they continue to encourage, enable, and advance innovation. We believe additions to regulatory frameworks must avoid duplicating existing requirements or creating overly broad, burdensome, and confusing requirements that are unnecessarily costly and difficult for companies to implement without providing significant value. As a result, we are fully supportive of the suggested amendments offered by Chairman Ruby, and also suggest additional amendments that will help to clarify and streamline the implementation of this bill.

Specifically, we recommend amending the following provisions of the bill, as suggested by Chairman Ruby and for the reasons described further below:

- Removal of the "Delivery available period" definition and subsequent references
- Removal of the Section 4 amendment and 39-34-03. Transportation driver requirements.
- Inserting a new section with language clarifying independent contractor certainty for delivery network drivers.

We also recommend amending the following provisions of the bill:

- Amending the introductory language in the bill referring to "classifying a transportation network company driver as an independent contractor" to read "delivery network company driver" so as to conform with the rest of the bill and its purpose.
- Removing the requirements in Paragraph 1 of Section 26.1-40.2-02, to allow delivery network companies appropriate flexibility in communicating with delivery network company drivers about their respective obligations with respect to automobile insurance coverage, consistent with the obligations set forth in the bill. At a minimum, we recommend removing the reference in Paragraph 1 to "as part of the delivery network company's agreement with the driver" as this would create a highly burdensome and difficult-to-administer obligation for delivery network companies and their drivers to execute new contracts each time a company's insurance program changed.
- Removing the word "primary" from the bill when describing the type of insurance coverage required by delivery network companies, to allow insurance carriers and delivery network companies flexibility in the insurance policies they underwrite and obtain, so long as the requisite coverage described in the bill is obtained.



Maplebear Inc. d/b/a Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

- Removal of Paragraph 4 of Section 26.1-40.2-03, consistent with other provisions of the bill that allow for a delivery network company driver or the delivery network company to obtain the requisite insurance, so long as the delivery network company's carrier provides coverage in the event the driver's policy is unavailable or insufficient.
- Amending Paragraph 6 of Section 26.1-40.2-03, to state that a delivery network company or its insurer shall cooperate in good faith, without setting forth the precise requirements for information to be shared, which may vary depending on the specific circumstances of the claim, available coverage, and parties involved.
- Removal of "delivery network company" from Section 39-34-02. Because a delivery network company transaction materially differs from a transportation network company transaction, the provisions of this section do not make sense as applied to delivery network companies. For example, it is unclear what an "applicable rate" is in the context of a consumer purchase of grocery items. Customers placing an order from a retailer through the Instacart platform may select a variety of items before completing a transaction, and are shown the prices of the goods they have selected, as well as applicable fees and estimated taxes, before completing the transaction. Unlike a transportation network company transaction, a delivery network company transaction generally follows a more traditional e-commerce purchasing process. It does not make sense to create a new standard for these transactions, in the context of automobile claims and insurance, and doing so may result in disparate and unfair treatment between delivery network companies and other e-commerce companies operating in the state.

We are concerned that unless amended, the proposed legislation creates a number of burdensome and in some cases, duplicative regulations for the companies who operate in North Dakota. Three changes proposed by Chairman Ruby are particularly necessary:

First, we disagree with the requirement for platforms to maintain auto insurance for drivers while they are online or have the app/platform open but are not providing any delivery services. This period is analogous to non-commercial commute time for independent delivery drivers, as they are under no obligation to accept any particular service requests and are not otherwise engaged in productive work. They could simply have the app open to browse for available work without ever accepting a delivery request.

Second, section 39-34-03 likely overlaps with state and federal laws, including those related to background checks. If the goal is to have safe drivers on the road, the North Dakota DMV licensing process may be a more appropriate venue to address this issue.

Third, workers who engage with app-based platforms choose when and where they want to work, which orders to fulfill, and how long they want to spend on a platform. Flexibility is one of the most important reasons workers perform this type of work. Without any provision guaranteeing their independence, certain requirements in the bill could be read to suggest that drivers are subject to the control of platform operators. And that suggestion could lead operators to change the way their platforms work or make fewer opportunities available in North Dakota. Neither result would help app-based delivery drivers – the intended beneficiaries of the bill.

Therefore, we ask that you adopt the amendments put forth by Chairman Ruby, and consider the additional amendments we have proposed above, prior to consideration of this measure.

Sincerely,

Kelley R. Foxx

Kelley R. Foxx

Head of Government Affairs, Midwest

23.0957.02002
Title.

Prepared by the Legislative Council staff for
Senator Klein
February 28, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

Page 1, line 2, after "reenact" insert "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"

Page 1, after line 3, insert "transportation network company insurance and"

Page 1, after line 5, insert:

"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 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.
- e-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 a~~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."

Renumber accordingly

23.0957.02001
Title.

Prepared by the Legislative Council staff for
Representative D. Ruby
February 13, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1440

Page 1, line 1, after "26.1-40.2" insert "and a new section to chapter 39-34"

Page 1, line 2, after "insurance" insert "and classifying a transportation network company driver as an independent contractor"

Page 1, line 3, remove "39-34-03,"

Page 1, line 9, remove "Delivery available period means the period when a driver:"

Page 1, remove lines 10 through 13

Page 1, line 14, remove "2."

Page 1, line 20, replace "3." with "2."

Page 1, line 23, replace "4." with "3."

Page 2, line 1, replace "5." with "4."

Page 2, line 11, replace "6." with "5."

Page 2, line 16, replace "7." with "6."

Page 2, line 19, replace "8." with "7."

Page 2, line 21, replace "9." with "8."

Page 3, line 2, remove "the delivery available period, if it applies, or"

Page 3, line 5, remove "available period, if it"

Page 3, line 6, remove "applies, and during the delivery"

Page 3, line 9, remove "and delivery available period."

Page 4, line 5, remove "delivery available period and"

Page 4, line 14, remove "available period and the delivery"

Page 4, line 20, remove "available period and the delivery"

Page 5, line 7, remove "available period or the delivery"

Page 5, line 18, remove "available period or the delivery"

Page 6, remove lines 11 through 30

Page 7, remove lines 1 through 15

Page 8, after line 17, insert:

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

23.0957.02001

FIRST ENGROSSMENT

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.

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FIRST ENGROSSMENT

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 of the North Dakota Century Code,
2 relating to delivery network company insurance; and to amend and reenact subsection 3 of
3 section 26.1-40.1-01, section 26.1-40.1-03, subsection 1 of section 26.1-40.1-04, and sections
4 39-34-01, 39-34-02, 39-34-03, 39-34-04, and 39-34-06 of the North Dakota Century Code,
5 relating to transportation network company insurance and transportation and delivery company
6 networks.

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

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

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

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

17 **26.1-40.1-03. Coverage**insurance coverage required ~~when transportation network~~
18 ~~company application is engaged until completion of ride when~~during the passenger has
19 ~~exited the vehicle~~on-board stage.

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

1 ~~a.1.~~ Transportation network company liability insurance is primary and in the amount of
2 one million dollars for death, bodily injury, and property damage. The requirements for
3 the coverage required by this ~~subdivision~~subsection may be satisfied by ~~any of the~~
4 ~~following~~:

5 ~~(1)~~a. Transportation network company insurance maintained by a participating driver.

6 ~~(2)~~b. Transportation network company insurance maintained by a transportation
7 network company.

8 ~~(3)~~c. Any combination of ~~paragraphs 1 and 2~~subdivisions a and b.

9 ~~b.2.~~ Transportation network company insurance coverage provided under this section for
10 uninsured motorist coverage must meet the requirements under section 26.1-40-15.2,
11 which is primary coverage.

12 ~~e.3.~~ Transportation network company insurance coverage provided under this section for
13 underinsured motorist coverage must meet the requirements under section
14 26.1-40-15.3, which is primary coverage.

15 ~~d.4.~~ Transportation network company insurance coverage must provide primary personal
16 injury protection to drivers, passengers, and pedestrians under chapter 26.1-41.

17 ~~e.5.~~ The primary insurer, in the case of insurance coverage provided under ~~subdivision~~
18 ~~a~~subsection 1, has the sole duty to defend and indemnify the insured.

19 ~~f.6.~~ Coverage under a transportation network company insurance policy may neither be
20 dependent on a driver's personal automobile insurance policy carrier first denying a
21 claim nor a personal automobile insurance policy carrier being required to first deny a
22 claim.

23 ~~g.7.~~ If transportation network company insurance maintained by a participating driver to
24 fulfill the insurance obligations of this section has excluded coverage according to its
25 policy or ceased to exist, the transportation network company shall provide the
26 coverage required by this section beginning with the first dollar of a claim.

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

- 29 1. During the application on stage and during the engaged stage, the transportation
30 network company insurance must include:

- 1 a. Motor vehicle liability coverage that is primary coverage. The coverage must
- 2 include at least fifty thousand dollars per person and one hundred thousand
- 3 dollars per incident for death and bodily injury and at least twenty-five thousand
- 4 dollars for property damage.
- 5 b. Uninsured motorist coverage under section 26.1-40-15.2 which is primary
- 6 coverage.
- 7 c. Underinsured motorist coverage under section 26.1-40-15.3 which is primary
- 8 coverage.
- 9 d. Personal injury protection under chapter 26.1-41 which is primary coverage.

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

12 **26.1-40.2-01. Definitions.**

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

- 1 a. Beginning when a driver starts operating a personal vehicle en route to pick up a
2 good for a delivery as documented via a digital network controlled by a delivery
3 network company;
- 4 b. Continuing while the driver transports the requested delivery; and
- 5 c. Ending upon delivery of the requested good to:
 - 6 (1) The delivery network company customer or the last delivery network
7 company customer in a series of deliveries; or
 - 8 (2) A location designated by the delivery network company, including for
9 purposes of returning the good.

10 6. "Delivery services" means the fulfillment of delivery requests made by a delivery
11 network company customer through a digital network, including the pickup of any good
12 and the delivery of the good to a delivery network company customer by a delivery
13 network driver. Delivery services may include a series of deliveries to different
14 customers.

15 7. "Digital network" means any online-enabled application, software, website, or system
16 offered or used by a delivery network company which enables deliveries with delivery
17 network drivers.

18 8. "Personal injury protection" means basic no-fault benefits as defined under section
19 26.1-41-01.

20 9. "Personal vehicle" means a vehicle that is:

- 21 a. Used by a delivery network driver to provide delivery services via a digital
22 network; or
- 23 b. Owned, leased, or otherwise authorized for use by the delivery network driver.

24 **26.1-40.2-02. Required disclosures.**

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

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

1 **26.1-40.2-03. Insurance requirements - Delivery network companies and delivery**
2 **network company drivers.**

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

1 coverage investigation to facilitate the exchange of information and shall immediately
2 provide upon request by directly involved parties or any insurer the precise times a
3 delivery network driver began and ended the delivery available period and delivery
4 service period on the delivery network company's digital network in the twelve-hour
5 period immediately preceding the accident and in the twelve-hour period immediately
6 following the accident. An insurer potentially providing the coverage required in this
7 section shall disclose upon request by any other insurer involved in the particular
8 claim, the applicable coverages, exclusions, and limits provided under any automobile
9 insurance maintained to satisfy the requirements of this section.

- 10 7. The insurer of a delivery network company providing coverage under subsections 1
11 and 2 shall assume primary liability for a claim when a dispute exists as to when the
12 delivery available period and the delivery service period began or ended and the
13 delivery network company does not have available, did not retain, or fails to provide
14 the information required by subsection 6.

15 **26.1-40.2-04. Exclusions in motor vehicle liability insurance policies.**

- 16 1. An authorized insurer that writes motor vehicle liability insurance in the state may
17 exclude any and all coverage and the duty to defend or indemnify for any injury or loss
18 occurring during the delivery available period and the delivery service period,
19 including:
20 a. Liability coverage for bodily injury and property damage;
21 b. Personal injury protection coverage under chapter 26.1-41;
22 c. Uninsured and underinsured motorist coverage;
23 d. Medical payments coverage;
24 e. Comprehensive physical damage coverage; and
25 f. Collision physical damage coverage.
- 26 2. This chapter does not:
27 a. Invalidate or limit an exclusion contained in a motor vehicle liability insurance
28 policy, including any insurance policy in use or approved for use which excludes
29 coverage for motor vehicles used for delivery or for any business use.
30 b. Invalidate, limit, or restrict an insurer's ability to underwrite any insurance policy.
31 c. Invalidate, limit, or restrict an insurer's ability to cancel and nonrenew policies.

1 3. A motor vehicle liability insurer that defends or indemnifies a claim against a delivery
2 network driver who is excluded under the terms of the insurer's policy may seek
3 recovery against the insurer providing coverage under subsections 1 and 2 of section
4 26.1-40.2-03 if the claim:

5 a. Occurs during the delivery available period or the delivery service period; and

6 b. Is excluded under the terms of its policy.

7 **26.1-40.2-05. Proof of insurance.**

8 1. A delivery network driver shall carry proof of insurance required at all times while using
9 a personal vehicle in connection with a digital network. If an accident occurs, a
10 delivery network driver shall, upon request, provide insurance coverage information to
11 a directly interested party, automobile insurer, and investigating law enforcement
12 officer.

13 2. The insurance coverage information may be displayed or provided in either paper or
14 electronic form. A delivery network driver shall, upon request, disclose to a directly
15 interested party, automobile insurer, and investigating law enforcement officer whether
16 the driver was operating during the delivery available period or the delivery service
17 period at the time of the accident.

18 **26.1-40.2-06. Authorized or eligible carrier.**

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

21 **26.1-40.2-07. Interaction with other law.**

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

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

28 **39-34-01. Agent.**

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

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

3 **39-34-02. Fare or fee charged for services.**

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

8 **SECTION 7. AMENDMENT.** Section 39-34-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **39-34-03. Transportation driver requirements.**

- 11 1. Before permitting an individual to act as a transportation network company driver or
12 delivery network company driver on its digital platform, the transportation network
13 company or delivery network company shall:
- 14 a. Require the individual to submit an application to the transportation network
15 company or delivery network company, which includes information regarding the
16 individual's address, age, driver's license, driving history, motor vehicle
17 registration, automobile liability insurance, and other information required by the
18 transportation network company or delivery network company;
 - 19 b. Conduct, or have a third party conduct, a local and national criminal background
20 check for each applicant that must include:
 - 21 (1) Multistate and multijurisdiction criminal records locator or other similar
22 commercial nationwide database with validation; and
 - 23 (2) National sex offender registry database; and
 - 24 c. Obtain and review a driving history research report for the individual.
- 25 2. The transportation network company or delivery network company may not permit an
26 individual to act as a transportation network company driver or delivery network
27 company driver on its digital platform who:
- 28 a. Has had more than three moving violations in the prior three-year period, or one
29 major violation in the prior three-year period, including attempting to evade the
30 police, reckless driving, or driving on a suspended or revoked license;

- 1 b. Has been convicted, within the past seven years, of driving under the influence of
- 2 drugs or alcohol, fraud, a sexual offense, use of a motor vehicle to commit a
- 3 felony, a crime involving property damage, theft, an act of violence, or an act of
- 4 terror;
- 5 c. Is a match in the national sex offender registry database;
- 6 d. Does not possess a valid driver's license;
- 7 e. Does not possess proof of registration for the motor vehicle used to provide
- 8 transportation network company or delivery network company services;
- 9 f. Does not possess proof of automobile liability insurance for the motor vehicle
- 10 used to provide transportation network company or delivery network company
- 11 services; or
- 12 g. Is not at least ~~twenty-one~~eighteen years of age.

13 **SECTION 8. AMENDMENT.** Section 39-34-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **39-34-04. Personally identifiable information.**

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

23 **SECTION 9. AMENDMENT.** Section 39-34-06 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **39-34-06. Controlling authority.**

- 26 1. Notwithstanding any other provision of law, transportation network companies and
- 27 transportation network company drivers are governed exclusively by this chapter,
- 28 chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by
- 29 the insurance commissioner under chapter 26.1-40.1.
- 30 2. A political subdivision may not impose a tax on, or require a license for, a
- 31 transportation network company ~~or a~~ transportation network company driver, delivery

1 network company, or a delivery network company driver or subject a transportation
2 network company or delivery network company to the political subdivision's rate, entry,
3 operational, or other requirements.

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