

## **CHAPTER 26.1-40**

### **AUTOMOBILE INSURANCE AND WARRANTIES**

**26.1-40-01. Definitions - Limitations.** As used in sections 26.1-40-02 through 26.1-40-12:

1. "Declination" means the refusal of an insurer to issue a policy upon receipt of a written nonbinding application or written request for coverage from its insurance producer or an applicant. The offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage, or the offering of policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, is a declination.
2. "Nonpayment of premium" means failure of the insured to discharge when due any of the insured's obligations in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its insurance producer or indirectly under any premium finance plan or extension of credit.
3. "Policy" means any automobile policy which includes automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, basic or optional excess no-fault benefits, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured an individual residing in this state, and under which the insured vehicles designated in the policy are of the following types only:
  - a. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others.
  - b. Any four-wheel motor vehicle with a load capacity of one thousand five hundred pounds [680.39 kilograms] or less which is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others.
  - c. Any motorcycle as that term is defined in section 39-01-01 that is not used as a public or livery conveyance, nor rented to others.

"Policy" does not include any policy that has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy; any policy issued under the North Dakota assigned risk plan; any policy insuring more than six motor vehicles; any policy covering the operation of a garage, automobile sales agency, repair shop, service station, or public parking place; any policy providing insurance only on an excess basis; or any other contract providing insurance to a named insured even though the contract may incidentally provide insurance with respect to such motor vehicles.

4. "Renewal" or "to renew" means:
  - a. The issuance and delivery by an insurer of a policy replacing, at the end of the previous policy period, a policy previously issued and delivered by the same insurer;
  - b. The issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; or
  - c. The extension of the term of a policy beyond its policy period or term pursuant to a provision for extending the policy by payment of a continuation premium.

Any policy with a policy period or term of less than six months must be considered as if written for a policy period or term of six months except in case of termination under any of the circumstances specified in subsection 2 of section 26.1-40-05. Any policy written for a term longer than one year or any policy with no fixed expiration date must be considered as if written for successive policy periods or terms of one year and any termination by an insurer effective on an anniversary date of the policy is deemed a failure to renew.

5. "Termination" means either a cancellation or nonrenewal of automobile insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term. An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage is not a termination. The transfer of a policy between companies within the same insurance holding company system is not a termination.

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

1. No insurer may cancel a policy except for the following reasons:
  - a. Nonpayment of premium.
  - b. Because the motor vehicle operator's license or motor vehicle registration of either the named insured or any other operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been suspended, rescinded, canceled, or revoked during the policy period, or, if the policy is a renewal, during its policy period or for one hundred eighty days immediately preceding its effective date. This subdivision does not apply and the insurer may not cancel a policy when the operator whose license is suspended or revoked is excluded from coverage under the policy. The insurer shall notify the named insured of the possibility of excluding an operator whose license has been suspended or revoked prior to cancellation of the policy. When an operator whose license is suspended or revoked is excluded from coverage under the policy covering a secured motor vehicle, the owner of the motor vehicle who gives expressed or implied consent to the operator to use the motor vehicle is not relieved of liability under subsection 5 of section 26.1-41-02.
  - c. Fraud or material misrepresentation made by or with the knowledge of any insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy.
  - d. The insured motor vehicle is:
    - (1) So mechanically defective that its operation might endanger public safety;
    - (2) Used in carrying passengers for hire or compensation; provided, however, that the use of an automobile for a car pool is not use of an automobile for hire or compensation;
    - (3) Used in the transportation of flammables or explosives or for an illegal purpose;
    - (4) An authorized emergency vehicle; or
    - (5) Altered by an insured during the policy period so as to substantially increase the risk.

- e. The named insured moves to a state where the insurer is not licensed to do business.
  - f. Failure to pay dues or fees when payment of the dues or fees is a prerequisite to obtaining or continuing automobile insurance coverage.
  - g. A determination by the commissioner that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interests of policyholders, creditors, or the public.
2. During the policy period no modification of automobile physical damage coverage, except coverage for loss caused by collision, by which provision is made for the application of a deductible amount not exceeding one hundred dollars is deemed a cancellation of the coverage or of the policy.
  3. Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.

**26.1-40-02.1. Cancellation of minor's driving privileges - Effect.** An insurer may not use or rely on the cancellation of a minor's driving privileges under section 39-06-01.1 as the sole reason to cancel, deny, or not renew the automobile insurance policy of the minor or a parent of the minor unless the points or offenses on the minor's public driving record, separate from a cancellation under section 39-06-01.1, would be a reason to cancel, deny, or not renew the policy.

**26.1-40-03. Notice of cancellation.** No insurer may exercise its right to cancel a policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least twenty days prior to the effective date of cancellation. When cancellation is for nonpayment of premium, the notice must be mailed or delivered to the named insured at the address shown in the policy at least ten days prior to the effective date of cancellation.

**26.1-40-04. Statement of reason for cancellation.** A notice of cancellation for nonpayment of premium must include or be accompanied by a statement of the reason for cancellation. Any other notice of cancellation must state or be accompanied by either a statement of the reason for cancellation, or a statement that upon written request of the named insured, the insurer will specify in writing the reason for cancellation. The written request must be mailed or delivered to the insurer at least ten days prior to the effective date of cancellation. The insurer shall mail or deliver the reason to the named insured within ten days after receipt of the written request. Failure to comply with the notice of cancellation provisions of section 26.1-40-03 or failure to furnish reasons for cancellation when required or requested is sufficient cause for the commissioner to cancel, revoke, or refuse to renew that company's certificate of authority to do business in this state.

**26.1-40-05. Nonrenewal - Notice - Statement of reasons - Nonrenewal not to be based on certain facts.**

1. No insurer may fail to renew a policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least thirty days prior to the expiration date of the policy or anniversary date of a policy written for a term longer than one year or with no fixed expiration date. The insurer shall include a statement of the reasons for nonrenewal with the notice or shall furnish it upon the written request of the insured mailed or delivered to the insurer at least ten days prior to the expiration date of the policy. The insurer shall comply with such a request within ten days after receipt thereof.
2. Subsection 1 does not apply:
  - a. If the insurer has manifested in any way its willingness to renew;

- b. In case of nonpayment of premium for the expiring policy; or
- c. If the insured fails to pay the premium as required by the insurer for renewal.

**26.1-40-06. Notification of possible eligibility for assigned risk policy.** When a policy is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy to which subsection 1 of section 26.1-40-05 applies, the insurer shall notify the named insured of the insured's possible eligibility for automobile insurance through the automobile assigned risk plan or automobile insurance plan. The notification must accompany or be included in the notice of cancellation or nonrenewal required by sections 26.1-40-03 and 26.1-40-05.

**26.1-40-07. Proof of notice of termination.** A postal service certificate of mailing to the named insured at the address shown in the policy is sufficient proof of notice. Proof of mailing a notice of cancellation or a notice of an intention not to renew, or business records of the notice of the insured's willingness to renew, must be retained for a period of one year by the insurer or insurance producer giving the notice.

**26.1-40-08. Reason for cancellation or nonrenewal - Nonliability of parties.** The specific reason for cancellation or nonrenewal which is furnished to the insured does not constitute grounds for any claim for relief against the insurer or the insured's authorized representative, or its agents or employees, or any person who in good faith furnishes to the insurer the information upon which the reasons for cancellation or nonrenewal are based.

**26.1-40-09. Termination of coverage when another policy in force.** Notwithstanding the failure of an insurer to comply with sections 26.1-40-01 through 26.1-40-12, termination of any coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same motor vehicle or any replacement of the motor vehicle.

**26.1-40-10. Notification and reasons for a declination.**

1. Upon declining an application or written request for a policy, the insurer making the declination shall either provide the insurance applicant with the specific reasons in writing for the declination at the time of the declination or advise the applicant in writing that specific written reasons for the declination will be provided within twenty-one days of the timely receipt by the insurer making the declination of the applicant's written request for the reasons. An applicant's written request is timely under this subsection if received within ninety days of the date of the notice to the applicant.
2. No insurer not represented by an insurance producer may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the insurer.
3. No insurance producer, for any reason set out in section 26.1-40-11, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the insurance producer or insurer.

**26.1-40-11. Terminations - Declinations - Prohibited reasons.** The declination of an application for, or the termination of, a policy by an insurer or insurance producer is prohibited if the declination or termination is:

1. Based upon the race, religion, nationality, or ethnic group of the applicant or named insured.
2. Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision does not apply to any insurer or insurance

producer which limits its market to one lawful occupation or profession or to several related lawful occupations or professions.

3. Based upon the principal location of the insured motor vehicle unless such decision is for a business purpose which is not mere pretext for unfair discrimination.
4. Based solely upon the age, sex, or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based upon age, sex, or marital status.
5. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.
6. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

**26.1-40-11.1. Juvenile's suspension of driving privileges - Nontraffic delinquent conduct.** Insurers are prohibited from using or relying on a nontraffic delinquent juvenile's suspension of driving privileges under section 27-20-31.1 as a reason for canceling, denying, or nonrenewing the automobile insurance policy of the nontraffic delinquent juvenile offender or the parents of the nontraffic delinquent juvenile offender.

**26.1-40-12. Sanctions.** If the commissioner after hearing determines that an insurer has violated section 26.1-40-02, 26.1-40-10, or 26.1-40-11, the commissioner may require the insurer to accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics, or reinstate insurance coverage to the end of the policy period; or continue insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics. If the commissioner has determined, after hearing, that any person has violated sections 26.1-40-02 through 26.1-40-12, the commissioner may issue a cease and desist order to restrain the person from engaging in practices which violate these sections, or assess a penalty against the person of up to five hundred dollars for each violation, or assess a penalty against the person of up to five thousand dollars for each willful and knowing violation, or cancel, revoke, or refuse to renew a company's certificate of authority to do business in this state.

**26.1-40-13. Definitions applicable to sections 26.1-40-13 through 26.1-40-15.** Repealed by S.L. 1989, ch. 375, § 8.

**26.1-40-14. Uninsured and underinsured motorist coverage - Compulsory - Stacking not permitted.** Repealed by S.L. 1989, ch. 375, § 8.

**26.1-40-15. Rights of insurer making payments under uninsured or underinsured motorist coverage.** Repealed by S.L. 1989, ch. 375, § 8.

**26.1-40-15.1. Definitions - Applicable to sections 26.1-40-15.1 through 26.1-40-15.7.** As used in sections 26.1-40-15.1 through 26.1-40-15.7 and unless the context otherwise requires:

1. "Motor vehicle" means a vehicle, excluding motor vehicles weighing more than twenty thousand pounds, having two or more load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
2. "Underinsured motor vehicle" means a motor vehicle for which there is a bodily injury liability insurance policy, or bond providing equivalent liability protection, in

effect at the time of the accident, but the applicable limit of bodily injury liability of such policy or bond:

- a. Is less than the applicable limit for underinsured motorist coverage under the insured's policy; or
  - b. Has been reduced by payments to other persons injured in the accident to an amount less than the limit for underinsured motorist coverage under the insured's policy.
3. "Uninsured motor vehicle" means a motor vehicle for which:
- a. There is no bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident.
  - b. There is an applicable policy or bond, but the insurer or issuer thereof refuses to provide coverage, denies coverage, or is or becomes insolvent as defined in section 26.1-42.1-02.
  - c. The identity of the owner or operator cannot be ascertained and the bodily injury, sickness, disease, or death of the insured is either caused by actual physical contact of such motor vehicle with the insured, or with a motor vehicle occupied by the insured, or is independently verified by a disinterested witness.
4. The terms "uninsured motor vehicle" and "underinsured motor vehicle" do not mean a motor vehicle:
- a. Insured under the liability coverage of the same policy of which the uninsured motorist or underinsured motorist coverage is a part.
  - b. Owned by any governmental unit, political subdivision, or agency thereof.
  - c. Located for use as a residence or premises.
  - d. With respect to uninsured motorist coverage, a self-insured motor vehicle within the meaning of the financial or safety responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law.
  - e. Operated by any person who is specifically excluded from coverage in the policy.

The term "underinsured motor vehicle" may not be construed to include an "uninsured motor vehicle".

#### **26.1-40-15.2. Uninsured motorist coverage.**

1. No motor vehicle liability insurance policy may be delivered, issued for delivery, or renewed in this state with respect to any specifically insured or identified motor vehicle registered, licensed, and principally garaged in this state unless uninsured motorist coverage is provided therein or supplemental thereto in limits set forth in section 39-16.1-11. Uninsured motorist coverage must pay compensatory damages which an insured is legally entitled to collect for bodily injury, sickness, or disease, including death resulting therefrom, or such insured, from the owner or operator of an uninsured motor vehicle arising out of the ownership, maintenance, or use of such uninsured motor vehicle.
2. At the request of a named insured, or applicant for insurance, the insurer providing uninsured motorist coverage shall also make available higher limits of uninsured motorist coverage in accordance with its rating plan and rules. The insurer need not

provide uninsured motorist coverage limits in excess of the insured's bodily injury liability limits, or one hundred thousand dollars per person and three hundred thousand dollars per accident, or if consistent with such rating plan and rules, a combined single limit equivalent of three hundred thousand dollars per accident, whichever is less.

3. The maximum liability of the uninsured motorist coverage is the lower of:
  - a. The amount of compensatory damages established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the bodily injury, sickness, disease, or death resulting therefrom; or
  - b. The limits of liability of the uninsured motorist coverage.
4. In any claim for uninsured motorist benefits, the insured and the insurer each bear responsibility for one's own attorney's fees incurred unless the insurance contract specifically provides otherwise or the insurance company is found to have acted in bad faith. It is neither a conflict of interest nor bad faith for an insurer to contest and press all defenses that the uninsured motorist could press.

**26.1-40-15.3. Underinsured motorist coverage.**

1. The insurer shall also provide underinsured motorist coverage at limits equal to the limits of uninsured motorist coverage. Underinsured motorist coverage must pay compensatory damages which an insured is legally entitled to collect for bodily injury, sickness, disease, including death resulting therefrom, of such insured, from the owner or operator of an underinsured motor vehicle arising out of the ownership, maintenance, or use of such underinsured motor vehicle.
2. The maximum liability of the underinsured motorist coverage is the lower of:
  - a. The amount of compensatory damages established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the bodily injury, sickness, disease, or death resulting therefrom; or
  - b. The limits of liability of the underinsured motorist coverage.
3. In any claim for underinsured motorist benefits, the insured and the insurer each bear responsibility for one's own attorney's fees incurred unless the insurance contract specifically provides otherwise or the insurance company is found to have acted in bad faith. It is neither a conflict of interest nor bad faith for an insurer to contest and press all defenses that the underinsured motorist could press.

**26.1-40-15.4. Other insurance and priority of payment.**

1. Any damages payable to or for any insured for uninsured or underinsured motorist coverage must be reduced by:
  - a. The amount paid, or payable under any workforce safety and insurance or other similar law, exclusive of nonoccupational disability benefits; and
  - b. Amounts paid or payable under any valid and collectible motor vehicle medical payments, personal injury protection insurance, or similar motor vehicle coverages.
2. Regardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy or premiums

paid, the limit of liability for uninsured motorist or underinsured motorist coverage may not be added to or stacked upon limits for such coverages applying to other motor vehicles to determine the amount of coverage available to an insured in any one accident.

3. If an insured is entitled to uninsured motorist or underinsured motorist coverage under more than one policy, the maximum amount such insured may recover may not exceed the highest limit of such coverage provided for any one vehicle under any one policy. If more than one policy applies, the following order of priority applies:
  - a. A policy covering a motor vehicle occupied by the injured person at the time of the accident.
  - b. A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured.
  - c. A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent it exceeds the coverage of a higher priority policy.

**26.1-40-15.5. Reimbursement and subrogation.**

1. In the event of payment under uninsured or underinsured motorist coverage, the insurer making payment to the extent of the payment is entitled to the proceeds of any agreement, settlement, or judgment resulting from the exercise of any rights of recovery of such insured for compensatory damages or be entitled to exercise a right of subrogation against any person or organization legally responsible for the bodily injury, sickness, disease, or death for which such payment is made.
2. No insurer providing underinsured motorist coverage has a right of subrogation against an underinsured motorist if the insurer has been provided with a written notice in advance of an agreement, settlement, or judgment between its insured and the underinsured motorist, and the insurer fails to advance a payment to the insured in an amount equal to the tentative agreement or settlement within thirty days following receipt of such notice. An insurer advancing such payment has full rights of subrogation.
3. If an insurer makes payment under uninsured or underinsured motorist coverages because of an insurer insolvency, as defined in section 26.1-42.1-02, the paying insurer's rights of reimbursement and subrogation do not include any rights of recovery against the insured of the insolvent insurer or against the North Dakota guaranty fund, except for the amount that is in excess of the limits of liability of the policy of the insolvent insurer.

**26.1-40-15.6. Limitations.** The uninsured and underinsured coverages provided for in sections 26.1-40-15.1 through 26.1-40-15.7 do not apply to bodily injury, sickness, disease, or death resulting therefrom of an insured:

1. While occupying a motor vehicle owned by, furnished or available for the regular use of the insured, a resident spouse, or resident relative, if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy;
2. While operating or occupying a motor vehicle without the specific permission of the owner thereof, or without a reasonable belief that the insured is entitled to do so;

3. For damages for pain, suffering, mental anguish, inconvenience, or other noneconomic loss which could not have been recovered had the owner or operator of the motor vehicle responsible for such loss maintained the security required under any applicable state no-fault law;
4. For punitive, exemplary, or other noncompensatory damages;
5. With respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist;
6. Until the limits of all bodily injury liability policies and bonds that apply have been exhausted by payment of settlements or judgments, or such limits or the remaining part of them have been offered to the insured in writing;
7. When the insured, without the written consent of the insurer, shall make any agreement or settlement with any person who may be legally liable therefor, if such agreement adversely affects the rights of the insurer. The insurer is not bound by any agreement or settlement without its prior knowledge and consent. This limitation does not apply to underinsured motorist coverage when the insured has advised the insurer, in compliance with subsection 2 of section 26.1-40-15.5, and the insurer has failed to advance the required payment to protect its right of reimbursement and subrogation;
8. If the insured has failed to report the accident to the proper law enforcement authorities as soon as practicable; and
9. While operating a motor vehicle in which the individual is specifically excluded.

**26.1-40-15.7. General provisions.**

1. After selection of limits by a named insured or applicant for insurance, the insurer or any of its affiliates is not required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of optional limits. Such selection by a named insured or an applicant is valid for all insureds under the policy. The insured may make, subject to the limitations expressed in sections 26.1-40-15.1 through 26.1-40-15.7, a request for additional coverage or coverage more extensive than that provided on a prior policy.
2. No insurer is required to offer, provide, or make available coverage conforming to sections 26.1-40-15.1 through 26.1-40-15.7 in connection with any excess policy, umbrella policy, or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation, or use of a specifically insured motor vehicle.
3. Notwithstanding any other provision of sections 26.1-40-15.1 through 26.1-40-15.7, an insurer may make underinsured motorist coverage a part of uninsured motorist coverage.
4. Notwithstanding any other provision of sections 26.1-40-15.1 through 26.1-40-15.7 or other laws of this state, a motor vehicle liability insurance policy may provide as to uninsured and underinsured motorist coverage, that any dispute with respect to issues of liability and damages may be submitted to binding arbitration if both parties agree. Such policy may also provide that coverage questions are not subject to arbitration.
5. Nothing in sections 26.1-40-15.1 through 26.1-40-15.7 may be construed to prevent an insurer from offering, making available, or providing coverage terms and conditions more favorable to its insured or limits higher than are required by sections 26.1-40-15.1 through 26.1-40-15.7.

**26.1-40-16. Exclusion of named persons - Restrictive endorsements.** By written agreement with the named insured, a private passenger automobile insurance policy covering an automobile or other motor vehicle registered or principally garaged in this state may exclude a named individual, individuals, or class of individuals from coverage. The policy may contain a restrictive endorsement reducing the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage while the vehicle is operated by a named individual or class of individuals. However, if the policy does provide liability coverage to a person named in a restrictive endorsement, the coverage may not be less than the minimum provided under section 26.1-40-15.2, section 26.1-40-15.3, subsection 2 of section 26.1-41-01, and section 39-16.1-11. If the policy excludes a named individual, individuals, or class of individuals from all coverage and the named insured expressly or impliedly consents to the operation of a secured motor vehicle by the excluded party, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02.

**26.1-40-16.1. Payment of benefits to family members of a policyholder.** An automobile insurance policy that provides coverage for bodily injury may not contain any provision limiting payment of benefits or reducing the amount of benefits payable to a person because the person to whom benefits are being paid under that policy is related to the policyholder by blood, marriage, or adoption, or is a foster child, and resides in the same household as the policyholder. However, a relative may be excluded from coverage under section 26.1-40-16.

**26.1-40-17. Establishment of primary and excess automobile liability coverages in certain instances.** When an automobile insurance policy which includes only automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, and basic or optional excess no-fault benefits is in force for anyone engaged in the business of selling, repairing, servicing, storing, leasing, or parking motor vehicles and the owner of the vehicles loans, rents, or leases a vehicle to any other person or organization and the vehicle is involved in an accident out of which bodily injury or property damage arises, the following is applicable:

1. If no other automobile insurance policy is in force at the time of the accident for the person or organization to whom the vehicle was loaned, rented, or leased, the coverage provided by the motor vehicle owner's automobile policy extends to the borrower, rentee, or lessee in the event the owner's automobile insurance policy extends coverage to the borrower, rentee, or lessee.
2. If another automobile insurance policy is in force for the person or organization to whom the vehicle was loaned, rented, or leased, any coverage provided by the motor vehicle owner's automobile insurance policy is excess coverage only but limited, however, by the terms of the owner's applicable automobile insurance policy. The policy afforded the person or organization to whom the vehicle was loaned, rented, or leased is primary.

Any policy provisions at variance with this section must be interpreted so as to comply with this section.

**26.1-40-17.1. Motor vehicle liability policy - Rental vehicles covered.**

1. Every motor vehicle liability insurance policy, as required by section 39-08-20, covering noncommercial private passenger motor vehicles must provide that all of the obligation for damage and loss of use to a rented private passenger vehicle will be covered by the property damage liability portion of the policy and subject to that policy limit. The obligation of the policy must not be contingent on fault or negligence of the insured. For purposes of this section, private passenger motor vehicle includes station wagons, minivans, vans, and pickups, and does not include motor homes, motorcycles, or trucks other than pickups.

2. A vehicle is rented for purposes of this section if the vehicle is rented under an agreement for thirty continuous days or less.
3. The policy or certificate issued by the insurer must inform the insured of the application of the insurance policy to rental vehicles and that the insured may not need to purchase additional coverage from the rental company.
4. If an insured has two or more vehicles covered by a plan or plans of liability insurance containing the rented motor vehicle coverage required under subsection 1, the insured may select the policy that the insured wishes to collect from and the insurer that issued that plan is entitled to a pro rata contribution from any other plan or insurers based upon the property damage limits of liability. If the person renting the motor vehicle is also covered by that person's employer's insurance policy or the employer's automobile self-insurance plan, the insurer or obligor under the employer's policy or self-insurance plan has primary responsibility to pay claims arising from use of the rented vehicle.
5. A notice advising the insured of rental vehicle coverage must be given by the insurer to each current insured with their first renewal notice following July 6, 1989. The notice must be approved by the insurance commissioner. The commissioner may specify the form of the notice.
6. A rental car company may not require as a condition to its rental contract that the renter make a deposit for a prior payment of damage to the rented vehicle or loss of use of that vehicle.
7. For each day a damaged vehicle is out of service because of damage to the vehicle while rented to others, the rental car company is entitled to collect sixty percent of the daily rental fee applicable to the contract in force when the car was damaged, but not to exceed fifteen days.

**26.1-40-18. Automobile warranties construed.**

1. A person who issues a written automobile warranty contract, automobile mechanical breakdown contract, or automobile service contract shall maintain a policy of insurance which provides coverage for the person's contractual obligation.
2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
  - a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
  - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile.
3. This section does not apply to an original equipment manufacturer.

**26.1-40-19. Certificate of authority to issue automobile warranty policy - Issuance - Qualifications - Renewal.** Repealed by S.L. 2001, ch. 107, § 4.

**26.1-40-20. Automobile warranties considered insurance - Surety bond.** Repealed by S.L. 2001, ch. 107, § 4.

**26.1-40-21. Revocation of certificate of authority.** Repealed by S.L. 2001, ch. 107, § 4.

**26.1-40-22. Penalty.** Any person violating section 26.1-40-18 is guilty of a class A misdemeanor.

**26.1-40-23. Notice to transfer.** The insurer transferring a policy to an insurer within the same insurance holding company system shall give notice to the policyholder of the transfer.

**26.1-40-24. Notice requirements following total loss.** If an insurer determines an automobile with physical damage coverage has incurred a total loss or constructive total loss and that insurer continues to write comprehensive or collision coverage on that automobile, the insurer shall provide notice to the insured that:

1. The insurer determined the automobile is a total loss;
2. The insured's current coverage on that automobile includes comprehensive or collision coverage;
3. If the insured does not repair the automobile, the insurer will reduce the amount of any future physical damage claim for that automobile by the amount paid for the total loss; and
4. If the insured does not repair that automobile, the insured should contact the agent to request that the comprehensive or collision coverage on that automobile be discontinued.

**26.1-40-25. Proof of insurance.** An insurer who issues a policy shall provide proof of insurance to the insured in the form of written evidence of the policy's terms as to type, duration, and the vehicle covered by the policy.