

Introduced by

Senators Kilzer, Carlisle

Representatives Hawken, Karls

1 A BILL for an Act ~~to create and enact subdivision c of subsection 3 of section 65-05-28 of the~~  
2 ~~North Dakota Century Code, relating to workers' compensation independent medical~~  
3 ~~examinations~~; to amend and reenact section 65-05-08.3 of the North Dakota Century Code,  
4 relating to workers' compensation consideration of treating doctor's opinions; and to provide for  
5 application.

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

7 **SECTION 1. AMENDMENT.** Section 65-05-08.3 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **65-05-08.3. Treating doctor's opinion.**

- 10 1. If the organization does not give an injured employee's treating doctor's opinion  
11 controlling weight, the organization shall establish that the treating doctor's opinion is  
12 not well-supported by medically acceptable clinical and laboratory diagnostic  
13 techniques or is inconsistent with the other substantial evidence in the injured  
14 employee's record based on one or more of the following factors:
- 15 a. The length of the treatment relationship and the frequency of examinations;
  - 16 b. The nature and extent of the treatment relationship;
  - 17 c. The amount of relevant evidence in support of the opinion;
  - 18 d. How consistent the opinion is with the record as a whole;
  - 19 e. Appearance of bias;
  - 20 f. Whether the doctor specializes in the medical issues related to the opinion; and
  - 21 g. Other relevant factors.
- 22 2. At an administrative hearing, the organization's determination under subsection 1 is  
23 subject to de novo review by the hearing officer.

1        3. This section does not apply to managed care programs under section 65-02-20. For  
2            purposes of this section, the organization shall determine whether a doctor is an  
3            injured employee's treating doctor.

4        ~~SECTION 2. Subdivision c of subsection 3 of section 65-05-28 the North Dakota Century~~  
5        ~~Code is created and enacted as follows:~~

6        ~~c. Notwithstanding section 65-05-28, if the organization obtains an independent~~  
7            ~~medical examination or independent medical review, the employe may call the~~  
8            ~~employee's treating doctor to testify at an administrative hearing at the expense~~  
9            ~~of the organization.~~

10        **SECTION 2. APPLICATION.** This Act applies to administrative hearings conducted on and  
11        after the effective date of this Act.