

SENATE BILL NO. 2288

Introduced by

Senators Fischer, Wardner

Representatives Devlin, Kasper

1 A BILL for an Act to provide for a motor vehicle insurance personal injury protection
2 examination program; and to amend and reenact section 26.1-41-11 of the North Dakota
3 Century Code, relating to motor vehicle insurance independent medical examinations.

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

5 **SECTION 1. Personal injury protection examination program.**

6 1. The insurance commissioner shall adopt rules establishing a personal injury
7 protection examination program for the purpose of timely investigation and
8 resolution of disputed personal injury protection claims submitted to an insurance
9 company under chapters 26.1-40 and 26.1-41. The commissioner may contract
10 with any person to develop the rules and for the administration of the personal
11 injury protection examination program. The personal injury protection examination
12 program is the exclusive method for obtaining an independent medical examination
13 from a health care practitioner other than a treating provider relating to a disputed
14 personal injury protection claim, except as provided under subsection 3.

15 2. The personal injury protection examination program must provide for the personal
16 injury protection examination review panel, which is a group of licensed health care
17 practitioners. The commissioner shall use public and private resources in
18 determining standards and qualifications for the personal injury protection review
19 panel members. A health care practitioner participating in the personal injury
20 protection review panel must be actively engaged in the practice of health care and
21 no more than forty-nine percent of the practitioner's practice and income may be
22 derived from witness fees and examinations of persons who are not under the
23 practitioner's care and treatment. The personal injury protection examination

1 review panel shall perform personal injury protection examinations at the request of
2 the commissioner.

3 3. Any insurer, insured, or injured individual entitled to benefits has the right to obtain
4 a personal injury protection examination with a health care practitioner from the
5 personal injury protection examination review panel regarding each type of
6 treatment involved in the disputed portion of the personal injury protection claim.
7 The requesting party, when submitting a request for a personal injury protection
8 examination, shall specify the professional specialty of the health care practitioner
9 who will perform the personal injury protection examination. If practical, the
10 professional specialty requested must be the same as that of the treating health
11 care practitioner whose treatment and opinion are intended to be reviewed by the
12 member of the personal injury protection review panel; except that psychiatrists,
13 psychologists, and neuropsychologists may review one practitioner's treatment and
14 opinions to the extent that the reviewing expert is qualified to address the specific
15 issues that arise in a particular case. This section does not preclude a managed
16 care organization from using its usual and customary review procedures.

17 4. Through a revolving selection process established by rule, the commissioner shall
18 prepare a list of five health care practitioners qualified to perform the personal
19 injury protection examination and shall submit the list to the requesting party.
20 Within five days of receipt of the list, the requesting party shall strike two names
21 from the list and submit the list to the opposing party. Within five days of receipt of
22 the list, the opposing party shall strike two names from the list. The opposing party
23 shall immediately return the list to the commissioner. The insurer and insured or
24 the injured individual entitled to benefits may agree upon a health care practitioner
25 to perform the personal injury protection examination without using the revolving
26 selection process. Upon the selection of the health care practitioner, the personal
27 injury protection examination must proceed and the requesting party shall pay the
28 costs of the examination.

29 5. The chosen health care practitioner shall determine whether the treatment that has
30 been rendered to the insured or injured individual entitled to benefits is reasonable,

1 if the treatment is necessary, and if the claimed injury or condition arises out of the
2 use of a motor vehicle.

3 6. A health care practitioner who performs a personal injury protection examination
4 pursuant to this section is immune from civil liability in any claim for relief brought
5 by any person based upon the practitioner's findings, opinions, and conclusions,
6 absent the showing of malice or bad faith on the part of the practitioner.

7 7. In the event the findings, opinions, and conclusion of the chosen health care
8 practitioner are contrary to the statement of causation, diagnosis, prognosis, plan
9 of treatment, opinions, or recommendations of the treating practitioner whose
10 actions have been reviewed, any party dissatisfied with such findings, opinions,
11 and conclusions may seek and pay for a second personal injury protection
12 examination under the procedures set forth under subsections 3 and 4.

13 8. In any arbitration or judicial proceeding commenced by the insurer, insured, or the
14 injured individual entitled to benefits, the findings, opinions, and conclusions of the
15 personal injury protection examination are presumed to be correct, but the
16 presumption may be rebutted by a preponderance of the evidence. If there has
17 been a second personal injury protection examination under subsection 7, the
18 agreed upon findings, opinions, and conclusions of two of the three health care
19 practitioners is binding unless rebutted by clear and convincing evidence in any
20 arbitration or judicial proceeding commenced by the insurer, the insured, or injured
21 individual entitled to benefits. A claim for relief, including a proceeding alleging any
22 cause of action under the tort of bad faith breach of the insurance contract, arising
23 out of any action taken by the insurer which is consistent with the agreed upon
24 findings, opinions, and conclusions of two of the three health care practitioners
25 may not be brought or maintained against the insurer; except that the insured or
26 injured individual entitled to benefits may bring a civil proceeding alleging that clear
27 and convincing evidence rebuts the findings, opinions, and conclusions of two of
28 the three health care practitioners. If the insured or injured individual entitled to
29 benefits is successful, the no-fault insurer is obligated to pay only the no-fault
30 benefits that had been denied and that were the subject of the proceeding.

1 9. Before adoption of the personal injury protection examination review panel rule, the
2 commissioner shall appoint a personal injury protection examination review panel
3 advisory committee to assist the commissioner. The advisory committee must
4 consist of appropriate representation from North Dakota licensed physicians, North
5 Dakota licensed chiropractors, the North Dakota health care association, insurers
6 licensed to do business in the state, the North Dakota defense research institute,
7 the North Dakota trial lawyers association, consumers of automobile insurance,
8 and any others the commissioner deems necessary.

9 **SECTION 2. AMENDMENT.** Section 26.1-41-11 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **26.1-41-11. Mental and physical examinations.** ~~Whenever~~ If the mental or physical
12 condition of a person is material to any claim that has been or may be made for past or future
13 basic or optional excess no-fault benefits, the person shall submit to mental or physical
14 examination by a physician designated by the basic no-fault insurer at a reasonably convenient
15 location, subject to section 1 of this Act. Basic no-fault insurers are authorized to include
16 reasonable provisions of this nature in policies providing basic or excess no-fault benefits.