

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1119

Introduced by

Representative Dosch

Senator Kilzer

(At the request of Workforce Safety and Insurance)

1 A BILL for an Act to amend and reenact section 65-05-28 of the North Dakota Century Code,
2 relating to drug testing of injured workers for workforce safety and insurance purposes; to
3 provide for application; and to provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 65-05-28 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **65-05-28. Examination of injured employee - Paid expenses - No compensation**
8 **paid if claimant refuses to reasonably participate.** Every employee who sustains an injury
9 may select a doctor of that employee's choice to render initial treatment. Upon a determination
10 that the employee's injury is compensable, the organization may require the employee to begin
11 treating with another doctor to better direct the medical aspects of the injured employee's claim.
12 The organization shall provide a list of three doctors who specialize in the treatment of the type
13 of injury the employee sustained. At the organization's request, the employee shall select a
14 doctor from the list. An injured employee shall follow the directives of the doctor or health care
15 provider who is treating the employee as chosen by the employee at the request of the
16 organization and comply with all reasonable requests during the time the employee is under
17 medical care. Providing further that:

- 18 1. No employee may change from one doctor to another while under treatment or
19 after being released, without the prior written authorization of the organization.
20 Failure to obtain approval of the organization renders the employee liable for the
21 cost of treatment and the new doctor will not be considered the attending doctor for
22 purposes of certifying temporary disability.
- 23 a. Any employee requesting a change of doctor shall file a written request with
24 the organization stating all reasons for the change. Upon receipt of the

request, the organization will review the employee's case and approve or deny the change of doctor, notifying the employee and the requested doctor.

- b. Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the organization.

- 2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the organization reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. Providing further that:

- a. No payment for mileage or other travel expenses may be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
- b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the organization may pay no more than actual cost of meals and lodging, if actual cost is less;
- c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
- d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and
- e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.

- 1 3. The organization may at any time require an employee to submit to an
2 independent medical examination or test by a duly qualified doctor or ~~doctors~~ a
3 health care facility designated or approved by the organization. The independent
4 medical examination or test must be for the purpose of review of the diagnosis,
5 prognosis, treatment, ~~or capabilities, fees, or to determine the presence or~~
6 absence of substances in the employee's system. The employee may have a duly
7 qualified doctor designated by that employee present at the examination if
8 procured and paid for by that employee. Providing further that:
- 9 a. In case of any disagreement between doctors making an examination on the
10 part of the organization and the employee's doctor, the organization shall
11 appoint an impartial doctor duly qualified who shall make an examination and
12 shall report to the organization.
- 13 b. The employee, in the discretion of the organization, may be paid reasonable
14 travel and other per diem expenses under the guidelines of subsection 2. If
15 the employee is working and loses gross wages from the employee's
16 employer for attending the examination, the gross wages must be reimbursed
17 as a miscellaneous expense upon receipt of a signed statement from the
18 employer verifying the gross wage loss.
- 19 c. The organization must have a reasonable basis to require an employee to
20 submit to a test to determine the presence or absence of substances in the
21 employee's system.
- 22 4. If an employee tests positive for the presence of an unprescribed substance listed
23 in chapter 19-03.1 or tests negative for the presence of a prescribed substance
24 listed in section 19-03.1-07 or 19-03.1-09, the organization may discontinue all
25 disability benefits for a period of thirty days. If the employee tests positive for the
26 presence of an unprescribed substance listed in chapter 19-03.1 or tests negative
27 for the presence of a prescribed substance listed in section 19-03.1-07 or
28 19-03.1-09 a second time, the organization may discontinue the payment of any
29 further disability or vocational rehabilitation benefits, regardless of whether the
30 employee sustains a significant change in medical condition due to the work injury.

1 5. If an employee or the employee's representative refuses to submit to, or in any
2 way intentionally obstructs or delays or refuses to reasonably participate in a test
3 to determine the presence or absence of substances in the employee's system, the
4 organization may discontinue disability and vocational rehabilitation benefits for a
5 period of thirty days. If the refusal, obstruction, delay, or refusal to reasonably
6 participate occurs a second time, the organization may discontinue the payment of
7 any further disability or vocational rehabilitation benefits, regardless of whether the
8 employee sustains a significant change in medical condition due to the work injury.

9 6. If an employee, or the employee's representative, refuses to submit to, or in any
10 way intentionally obstructs, any examination or treatment, or refuses to reasonably
11 participate in medical or other treatments or examinations, the employee's right to
12 claim compensation under this title is suspended until the refusal or obstruction
13 ceases. No compensation is payable while the refusal or obstruction continues,
14 and the period of the refusal or obstruction must be deducted from the period for
15 which compensation is payable to the employee.

16 ~~5-~~ 7. If an employee undertakes activities, whether or not in the course of employment,
17 which exceed the treatment recommendations of the employee's doctor regarding
18 the work injury, and the doctor determines that the employee's injury or condition
19 has been aggravated or has worsened as a result of the employee's activities, the
20 organization may not pay benefits relative to the aggravation or worsening, unless
21 the activities were undertaken at the demand of an employer. An employer's
22 account may not be charged with the expenses of an aggravation or worsening of
23 a work-related injury or condition unless the employer knowingly required the
24 employee to perform activities that exceed the treatment recommendations of the
25 employee's doctor.

26 8. The organization may adopt rules consistent with this section to determine the
27 criteria for substance testing.

28 **SECTION 2. APPLICATION.** This Act applies to all claims regardless of the date of
29 injury.

30 **SECTION 3. EFFECTIVE DATE.** This Act is effective thirty days after the effective
31 date of administrative rules adopted by workforce safety and insurance to establish criteria for

- 1 substance abuse testing. Workforce safety and insurance shall certify to the legislative council
- 2 when this Act has become effective as provided in this section.