

**SENATE BILL NO. 2297**

Introduced by

Senators Nething, Cook, Robinson

Representatives DeKrey, R. Kelsch, Skarphol

1 A BILL for an Act to amend and reenact section 65-05-28 of the North Dakota Century Code,  
2 relating to workers' compensation independent medical examinations.

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

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

6 **65-05-28. Examination of injured employee - Paid expenses - No compensation**  
7 **paid if claimant refuses to reasonably participate.** Every employee who sustains an injury  
8 may select a doctor of that employee's choice to render initial treatment. Upon a determination  
9 that the employee's injury is compensable, the organization may require the employee to begin  
10 treating with another doctor to better direct the medical aspects of the injured employee's claim.  
11 The organization shall provide a list of three doctors who specialize in the treatment of the type  
12 of injury the employee sustained. At the organization's request, the employee shall select a  
13 doctor from the list. An injured employee shall follow the directives of the doctor or health care  
14 provider who is treating the employee as chosen by the employee at the request of the  
15 organization and comply with all reasonable requests during the time the employee is under  
16 medical care. Providing further that:

17 1. ~~No~~ An employee may not change from one doctor to another while under  
18 treatment or after being released, without the prior written authorization of the  
19 organization. Failure to obtain approval of the organization renders the employee  
20 liable for the cost of treatment and the new doctor will not be considered the  
21 attending doctor for purposes of certifying temporary disability.

22 a. Any employee requesting a change of doctor shall file a written request with  
23 the organization stating all reasons for the change. Upon receipt of the  
24 request, the organization ~~will~~ shall review the employee's case and approve

- 1                   or deny the change of doctor, notifying the employee and the requested  
2                   doctor.
- 3                   b.   Emergency care or treatment or referral by the attending doctor does not  
4                   constitute a change of doctor and does not require prior approval of the  
5                   organization.
- 6                   2.   Travel and other personal reimbursement for seeking and obtaining medical care is  
7                   paid only upon request of the injured employee. All claims for reimbursement must  
8                   be supported by the original vendor receipt and must be submitted within one year  
9                   of the date the expense was incurred or reimbursement must be denied.  
10                  Reimbursement must be made at the organization reimbursement rates in effect on  
11                  the date of incurred travel or expense. Mileage calculations must be based upon  
12                  the atlas or map mileage from city limit to city limit and do not include intracity  
13                  mileage. Providing further that:
- 14                  a.   No payment for mileage or other travel expenses may be made when the  
15                  distance traveled is less than fifty miles [80.47 kilometers] one way, unless the  
16                  total mileage equals or exceeds two hundred miles [321.87 kilometers] in a  
17                  calendar month;
- 18                  b.   All travel reimbursements are payable at the rates at which state employees  
19                  are paid per diem and mileage, except that the organization may pay no more  
20                  than actual cost of meals and lodging, if actual cost is less;
- 21                  c.   Reimbursement may not be paid for travel other than that necessary to obtain  
22                  the closest available medical or hospital care needed for the injury. If the  
23                  injured employee chooses to seek medical treatment outside a local area  
24                  where care is available, travel reimbursement may be denied;
- 25                  d.   Reimbursement may not be paid for the travel and associated expenses  
26                  incurred by the injured employee's spouse, children, or other persons unless  
27                  the employee's injury prevents travel alone and the inability is medically  
28                  substantiated; and
- 29                  e.   Other expenses, including telephone calls and car rentals are not  
30                  reimbursable expenses.

- 1           3. The organization may at any time require an employee to submit to an independent  
2           medical examination for the purpose of review of the diagnosis, prognosis,  
3           treatment, or fees by a duly qualified doctor or doctors designated or approved by  
4           the organization who specializes in the diagnosis, prognosis, or treatment being  
5           reviewed. The organization shall select a doctor for the independent medical  
6           examination must be for the purpose of review of the diagnosis, prognosis,  
7           treatment, or fees from a list of three doctors which is provided by the state board  
8           of medical examiners. In creating a list of three doctors the state board of medical  
9           examiners shall give preference to doctors in the state unless the employee  
10           expresses a preference for an out-of-state doctor. The employee may have a duly  
11           qualified doctor designated by that employee present at the examination if  
12           procured and paid for by that employee and at the employee's request the  
13           organization shall designate and pay for a registered nurse to be present at the  
14           examination. This section does not prohibit an employee from requesting that a  
15           friend or family member be present at the examination. Providing further that:  
16           a. In case of any disagreement between doctors making an examination on the  
17           part of the organization and the employee's doctor, the organization shall  
18           appoint an impartial doctor duly qualified and selected from a list of three  
19           doctors which is provided by the state board of medical examiners who shall  
20           make an examination and shall report to the organization.  
21           b. The employee, in the discretion of the organization, may be paid reasonable  
22           travel and other per diem expenses under the guidelines of subsection 2. If  
23           the employee is working and loses gross wages from the employee's  
24           employer for attending the examination, the gross wages must be reimbursed  
25           as a miscellaneous expense upon receipt of a signed statement from the  
26           employer verifying the gross wage loss.
- 27           4. If an employee, or the employee's representative, refuses to submit to, or in any  
28           way intentionally obstructs, any examination or treatment, or refuses to reasonably  
29           participate in medical or other treatments or examinations, the employee's right to  
30           claim compensation under this title is suspended until the refusal or obstruction  
31           ceases. No compensation is payable while the refusal or obstruction continues,

- 1                   and the period of the refusal or obstruction must be deducted from the period for  
2                   which compensation is payable to the employee.
- 3           5.   If an employee undertakes activities, whether or not in the course of employment,  
4           which exceed the treatment recommendations of the employee's doctor regarding  
5           the work injury, and the doctor determines that the employee's injury or condition  
6           has been aggravated or has worsened as a result of the employee's activities, the  
7           organization may not pay benefits relative to the aggravation or worsening, unless  
8           the activities were undertaken at the demand of an employer. An employer's  
9           account may not be charged with the expenses of an aggravation or worsening of  
10           a work-related injury or condition unless the employer knowingly required the  
11           employee to perform activities that exceed the treatment recommendations of the  
12           employee's doctor.