

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2298

Introduced by

Senators Kilzer, Carlisle

Representatives Hawken, Karls

1 A BILL for an Act to amend and reenact section 65-05-08.3 of the North Dakota Century Code,
2 relating to workers' compensation consideration of treating doctor's opinions; ~~and~~ to provide for
3 application; and to declare an emergency.

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

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

7 **65-05-08.3. Treating doctor's opinion.**

- 8 1. ~~If the organization does not give~~A presumption may not be established in favor of an
9 injured employee's treating doctor's opinion ~~controlling weight, the organization shall~~
10 ~~establish that the treating doctor's opinion is not well-supported by medically~~
11 ~~acceptable clinical and laboratory diagnostic techniques or is inconsistent with the~~
12 ~~other substantial evidence in the injured employee's record based on one or more of.~~
13 The organization shall resolve conflicting medical opinions and in doing so the
14 organization may consider 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.~~If the organization's resolution of
24 conflicting medical opinions under subsection 1 is reviewed by a hearing officer as part

1 of a rehearing of an administrative order or by a judge as part of an appeal of a
2 posthearing administrative order, the hearing officer or judge shall affirm the
3 organization's resolution if a reasoning mind could reasonably conclude that the
4 organization's resolution is supported by the greater weight of the evidence.

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

8 **SECTION 2. APPLICATION.** This Act applies to ~~administrative hearings conducted on and~~
9 ~~after the effective date of this Act~~all claims, regardless of date of injury.

10 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.