

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

- 1 request, the organization will review the employee's case and approve or  
2 deny the change of doctor, notifying the employee and the requested 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  
7 is paid only upon request of the injured employee. All claims for reimbursement  
8 must be supported by the original vendor receipt and must be submitted within one  
9 year of the date the expense was incurred or reimbursement must be denied.  
10 Reimbursement must be made at the organization reimbursement rates in effect  
11 on the date of incurred travel or expense. Mileage calculations must be based  
12 upon 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  
16 the total mileage equals or exceeds two hundred miles [321.87 kilometers] in  
17 a 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  
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

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- 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.