

**FIRST ENGROSSMENT  
with House Amendments  
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; 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. If the organization's resolution of conflicting medical opinions under subsection 1 is  
23 reviewed by a hearing officer as part of a rehearing of an administrative order or by a  
24 judge as part of an appeal of a posthearing administrative order, the hearing officer or

1           judge shall affirm the organization's resolution if a reasoning mind could reasonably  
2           conclude that the organization's resolution is supported by the greater weight of the  
3           evidence.

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

7        **SECTION 2. APPLICATION.** This Act applies to all claims, regardless of date of injury.

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