

HOUSE BILL NO. 1386

Introduced by

Representatives Klemin, Berg, Kretschmar

Senators Kilzer, Nething, Trenbeath

1 A BILL for an Act to provide for mandatory alternative dispute resolution for professional
2 malpractice claims; to amend and reenact section 32-42-01 of the North Dakota Century Code,
3 relating to alternative dispute resolution definitions; to repeal sections 32-42-03 and 32-42-04 of
4 the North Dakota Century Code, relating to alternative dispute resolution; and to provide an
5 effective date.

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

7 **SECTION 1. AMENDMENT.** Section 32-42-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **32-42-01. Definitions.** In this chapter:

- 10 1. ~~"Alternative dispute resolution" means the resolution of a health care malpractice~~
11 ~~claim in a manner other than through a health care malpractice action.~~
- 12 ~~2.~~ "Claimant" means any person who alleges a health care malpractice claim, and
13 any person on whose behalf the claim is alleged, including the decedent in the
14 case of an action brought through or on behalf of an estate.
- 15 ~~3.~~ 2. "Health care malpractice action" means a claim for relief brought against a health
16 care provider, or other defendant joined in the action, regardless of the theory of
17 liability on which the claim is based, in which the claimant alleges a health care
18 malpractice claim.
- 19 ~~4.~~ 3. "Health care malpractice claim" means a claim brought against a health care
20 provider or other defendant joined in a claim alleging that an injury was suffered by
21 the claimant as a result of health care negligence or gross negligence, breach of
22 express or implied warranty or contract, failure to discharge a duty to warn, or
23 failure to obtain consent arising from the provision of or failure to provide health
24 care services.

- 1 ~~5-~~ 4. "Health care negligence" means an act or omission by a health care provider which
2 deviates from the applicable standard of care and causes an injury.
- 3 ~~6-~~ 5. "Health care provider" means a person who is licensed, certified, or otherwise
4 authorized by the law of this state to administer health care in the ordinary course
5 of business or practice of a profession.
- 6 ~~7-~~ 6. "Injury" means an injury, illness, disease, or other harm suffered by an individual as
7 a result of the provision of health care services by a health care provider.
- 8 ~~8-~~ 7. "Noneconomic damage" means damage arising from pain; suffering;
9 inconvenience; physical impairment; disfigurement; mental anguish; emotional
10 distress; fear of injury, loss, or illness; loss of society and companionship; loss of
11 consortium; injury to reputation; humiliation; and other nonpecuniary damage
12 incurred by an individual with respect to which a health care malpractice action or
13 claim is pursued.

14 **SECTION 2. Mandatory alternative dispute resolution for professional**
15 **malpractice claims.**

- 16 1. For purposes of this section, "professional malpractice claim" means a claim
17 subject to subsection 3 of section 28-01-18 brought against a professional or other
18 defendant joined in a claim alleging that an injury was suffered by the claimant as a
19 result of professional misconduct, unreasonable lack of skill or fidelity in
20 professional or fiduciary duties, negligence or gross negligence, breach of express
21 or implied warranty or contract, failure to discharge a duty to warn, or failure to
22 obtain consent arising from the provision of or failure to provide services.
- 23 2. Before an action may be commenced, every professional malpractice claim filed
24 with the district court, except for good cause as determined by the court, is subject
25 to mandatory alternative dispute resolution. The supreme court shall establish a
26 statewide mandatory alternative dispute resolution program for the resolution of
27 professional malpractice claims. The supreme court shall adopt rules governing
28 the practice, procedure, and jurisdiction for alternative dispute resolution programs
29 established under this section. The rules must:
- 30 a. Provide an equitable means for the payment of fees and expenses of the
31 alternative dispute resolution processes; and

- 1 b. Provide that the damages awarded to a party as a result of the alternative
2 dispute resolution process may not exceed the damages allowed by law for
3 that type of professional malpractice.
- 4 3. The alternative dispute resolution methods provided for under the rules may
5 include arbitration, private trials, neutral expert factfinding, mediation, minitrials,
6 and any other methods developed by the supreme court. The methods provided
7 must be nonbinding unless otherwise agreed to in a valid agreement between the
8 parties.
- 9 4. At the conclusion of the alternative dispute resolution process, a party to the
10 agreement may initiate a civil action except to the extent otherwise provided in
11 chapter 32-29.3. The court may award attorney's fees in the civil action and the
12 costs and attorney's fees of the alternative dispute resolution process to the
13 prevailing party if the decision of the court or jury is not more favorable than the
14 recommended decision or last offer in the alternative dispute resolution
15 proceeding. Any decision, agreement, or recommendation reached or last offer
16 made as a result of the alternative dispute resolution process may be used by a
17 court to determine attorney's fees.
- 18 5. Any party that fails to make a good-faith effort to resolve the professional
19 malpractice claim through the alternative dispute resolution program is subject to
20 sanctions by the court.
- 21 6. The alternative dispute resolution process under this section stays the running of
22 any applicable statute of limitations until ninety days after the date of the
23 recommended decision or last offer in the alternative dispute resolution
24 proceeding.

25 **SECTION 3. REPEAL.** Sections 32-42-03 and 32-42-04 of the North Dakota Century
26 Code are repealed.

27 **SECTION 4. EFFECTIVE DATE.** This Act becomes effective on January 1, 2006.