

SENATE BILL NO. 2199

Introduced by

Senators Brown, G. Lee

Representatives Devlin, Klemin, Kretschmar

1 A BILL for an Act to amend and reenact section 28-01-46 of the North Dakota Century Code,
2 relating to expert opinion required in certain civil cases.

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

4 **SECTION 1. AMENDMENT.** Section 28-01-46 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **28-01-46. Expert opinion required to maintain an action based upon alleged**
7 **medical negligence except in obvious cases.** Any action for injury or death ~~against~~ alleging
8 professional negligence by a physician, nurse, or hospital, or nursing, basic, or assisted living
9 facility licensed by this state based upon professional negligence or by any other health care
10 organization, including an ambulatory surgery center or group of physicians operating a clinic or
11 outpatient care facility, must be dismissed without prejudice on motion unless the ~~claimant has~~
12 ~~obtained an admissible expert opinion to support the allegation~~ plaintiff serves upon the
13 defendant with the summons and complaint an affidavit containing an admissible expert opinion
14 to support a prima facie case of professional negligence within three months of the
15 ~~commencement of the action or at such.~~ The court may set a later date as set by the court for
16 filing the affidavit for good cause shown by the plaintiff by clear and convincing evidence. The
17 expert's affidavit must identify the name and business address of the expert, indicate the
18 expert's field of expertise, and contain a brief summary of the basis for the expert's opinion.
19 This section does not apply to ~~alleged lack of informed consent,~~ unintentional failure to remove
20 a foreign substance from within the body of a patient, or performance of a medical procedure
21 upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious
22 occurrence.