

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2199  
(Senators Brown, G. Lee)  
(Representatives Devlin, Klemin, Kretschmar)

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to expert opinion required in certain civil cases.

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

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

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

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2199.

Senate Vote:    Yeas    45        Nays    0        Absent    2

House Vote:    Yeas    90        Nays    0        Absent    4

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State