## Sixty-first Legislative Assembly of North Dakota In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1302 (Representative Klemin) (Senator Nething)

AN ACT to amend and reenact section 28-01-46 of the North Dakota Century Code, relating to extension of time for serving an expert opinion affidavit in medical liability actions.

## 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 alleging professional negligence by a physician, nurse, hospital, or nursing, basic, or assisted living facility licensed by this state 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 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. The court may set a later date for serving the affidavit for good cause shown by the plaintiff if the plantiff's request for an extension of time is made before the expiration of the three-month period following commencement of the action. 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 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.

| Sp                                                     | Speaker of the House  Chief Clerk of the House |                        |                         |                      | President of the Senate  Secretary of the Senate |                                          |                            |
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| Ch                                                     |                                                |                        |                         |                      |                                                  |                                          |                            |
| This certifies th<br>Assembly of No                    | nat the with<br>orth Dakota                    | nin bill o<br>a and is | riginated i<br>known on | n the Ho<br>the reco | ouse of Repr<br>ords of that b                   | resentatives of the Sody as House Bill N | Sixty-first Lo<br>o. 1302. |
| House Vote:                                            | Yeas                                           | 62                     | Nays                    | 32                   | Absent                                           | 0                                        |                            |
| Senate Vote:                                           | Yeas                                           | 27                     | Nays                    | 19                   | Absent                                           | 1                                        |                            |
| Received by the Governor at M. on<br>Approved at M. on |                                                |                        |                         |                      |                                                  |                                          |                            |
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| Filed in this offi                                     |                                                |                        | day of                  | f                    |                                                  |                                          | , 2009,                    |
|                                                        |                                                |                        |                         |                      | Secre                                            | tary of State                            |                            |