

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 an affidavit containing an admissible expert opinion to support a prima facie case of  
14 professional negligence within three months of the commencement of the action or at such.  
15 The court may set a later date as set by the court for serving the affidavit for good cause shown  
16 by the plaintiff. The expert's affidavit must identify the name and business address of the  
17 expert, indicate the expert's field of expertise, and contain a brief summary of the basis for the  
18 expert's opinion. This section does not apply to ~~alleged lack of informed consent,~~ unintentional  
19 failure to remove a foreign substance from within the body of a patient, or performance of a  
20 medical procedure upon the wrong patient, organ, limb, or other part of the patient's body, or  
21 other obvious occurrence.