

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1302

Introduced by

Representative Klemin

Senator Nething

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

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 alleging  
8 professional negligence by a physician, nurse, hospital, or nursing, basic, or assisted living  
9 facility licensed by this state or by any other health care organization, including an ambulatory  
10 surgery center or group of physicians operating a clinic or outpatient care facility, must be  
11 dismissed without prejudice on motion unless the plaintiff serves upon the defendant an  
12 affidavit containing an admissible expert opinion to support a prima facie case of professional  
13 negligence within three months of the commencement of the action. The court may set a later  
14 date for serving the affidavit for good cause shown by the plaintiff if the plaintiff's request for an  
15 extension of time is made before the expiration of the three-month period following  
16 commencement of the action. The expert's affidavit must identify the name and business  
17 address of the expert, indicate the expert's field of expertise, and contain a brief summary of the  
18 basis for the expert's opinion. This section does not apply to unintentional failure to remove a  
19 foreign substance from within the body of a patient, or performance of a medical procedure  
20 upon the wrong patient, organ, limb, or other part of the patient's body, or other obvious  
21 occurrence.