

Introduced by

Representatives Dosch, Meier, Wald

Senators Dever, Wardner

1 A BILL for an Act to create and enact three new sections to chapter 32-42 of the North Dakota  
2 Century Code, relating to medical professional liability reform; and to amend and reenact  
3 section 32-42-01 of the North Dakota Century Code, relating to definitions.

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

5 **SECTION 1. AMENDMENT.** Section 32-42-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **32-42-01. Definitions.** In this chapter:

- 8 1. "Alternative dispute resolution" means the resolution of a health care malpractice  
9 claim in a manner other than through a health care malpractice action.
- 10 2. "Claimant" means any person who alleges a health care malpractice claim, and  
11 any person on whose behalf the claim is alleged, including the decedent in the  
12 case of an action brought through or on behalf of an estate.
- 13 3. "Future damages" includes damages for future medical treatment, care or custody,  
14 loss of future earnings, loss of bodily function, or future pain and suffering of the  
15 judgment creditor.
- 16 4. "Health care malpractice action" means a claim for relief brought against a health  
17 care provider, or other defendant joined in the action, regardless of the theory of  
18 liability on which the claim is based, in which the claimant alleges a health care  
19 malpractice claim.
- 20 4- 5. "Health care malpractice claim" means a claim brought against a health care  
21 provider or other defendant joined in a claim alleging that an injury was suffered by  
22 the claimant as a result of health care negligence or gross negligence, breach of  
23 express or implied warranty or contract, failure to discharge a duty to warn, or

1 failure to obtain consent arising from the provision of or failure to provide health  
2 care services.

3 ~~5.~~ 6. "Health care negligence" means an act or omission by a health care provider which  
4 deviates from the applicable standard of care and causes an injury.

5 ~~6.~~ 7. "Health care provider" means a person who is licensed, certified, or otherwise  
6 authorized by the law of this state to administer health care in the ordinary course  
7 of business or practice of a profession.

8 ~~7.~~ 8. "Injury" means an injury, illness, disease, or other harm suffered by an individual as  
9 a result of the provision of health care services by a health care provider.

10 ~~8.~~ 9. "Noneconomic damage" means damage arising from pain; suffering;  
11 inconvenience; physical impairment; disfigurement; mental anguish; emotional  
12 distress; fear of injury, loss, or illness; loss of society and companionship; loss of  
13 consortium; injury to reputation; humiliation; and other nonpecuniary damage  
14 incurred by an individual with respect to which a health care malpractice action or  
15 claim is pursued.

16 10. "Periodic payments" means the payment of money or delivery of other property to  
17 the judgment creditor at regular intervals.

18 11. "Recovered" means the net sum recovered after deducting any disbursements or  
19 costs incurred in connection with prosecution or settlement of the claim. Costs of  
20 medical care incurred by the plaintiff and the attorney's office overhead costs or  
21 charges are not deductible disbursements or costs for such purpose.

22 **SECTION 2.** Three new sections to chapter 32-42 of the North Dakota Century Code  
23 are created and enacted as follows:

24 **Periodic payment of damages.**

25 1. In any action for injury or damages against a provider of health care services, the  
26 district court, at the request of either party, shall enter a judgment ordering that  
27 money damages or its equivalent for future damages of the judgment creditor be  
28 paid in whole or in part by periodic payments rather than by a lump sum payment if  
29 the award equals or exceeds fifty thousand dollars in future damages. In entering  
30 a judgment ordering the payment of future damages by periodic payments, the  
31 court shall make a specific finding as to the dollar amount of periodic payments

1           which will compensate the judgment creditor for the future damages. As a  
2           condition to authorizing periodic payments of future damages, the court shall  
3           require the judgment debtor who is not adequately insured to post security  
4           adequate to assure full payment of the damages awarded by the judgment. Upon  
5           termination of periodic payments of future damages, the court shall order the return  
6           of this security, or so much as remains, to the judgment debtor.

7           2. The judgment ordering the payment of future damages by periodic payments must  
8           specify the recipient or recipients of the payments, the dollar amount of the  
9           payments, the interval between payments, and the number of payments or the  
10           period of time over which payments are to be made. The payments may only be  
11           subject to modification in the event of the death of the judgment creditor. If the  
12           court finds that the judgment debtor has exhibited a continuing pattern of failing to  
13           make the payments, the court shall find the judgment debtor in contempt of court  
14           and, in addition to the required periodic payments, shall order the judgment debtor  
15           to pay the judgment creditor all damages caused by the failure to make the  
16           periodic payments, including court costs and attorney's fees.

17           3. Money damages awarded for loss of future earnings may not be reduced or  
18           payments terminated by reason of the death of the judgment creditor, but must be  
19           paid to persons to whom the judgment creditor owed a duty of support, as provided  
20           by law, immediately before the judgment creditor's death. In such cases the court  
21           that rendered the original judgment, upon petition of any party in interest, may  
22           modify the judgment to award and apportion the unpaid future damages in  
23           accordance with this subsection.

24           4. Following the occurrence or expiration of all obligations specified in the periodic  
25           payment judgment, any obligation of the judgment debtor to make further  
26           payments ceases and any security given under subsection 1 reverts to the  
27           judgment debtor.

28           **Evidence of collateral source benefits.** Notwithstanding section 32-03.2-06, any  
29           party may introduce evidence of collateral source benefits in a health care malpractice action. If  
30           a party elects to introduce the evidence, any opposing party may introduce evidence of any  
31           amount paid or contributed or reasonably likely to be paid or contributed in the future by or on

1 behalf of the opposing party to secure the right to those collateral source benefits. No provider  
2 of collateral source benefits may recover any amount against the claimant or receive any lien or  
3 credit against the claimant's recovery or be equitably or legally subrogated to the right of the  
4 claimant in a health care malpractice action. This section applies to any health care  
5 malpractice action that is settled or resolved by a factfinder.

6 **Maximizing patient recovery.**

- 7 1. In any health care malpractice action in which the attorney for a party claims a  
8 financial stake in the outcome by virtue of a contingent fee, the court may restrict  
9 the payment of a claimant's damage recovery to the attorney and may redirect  
10 those damages to the claimant based upon the interests of justice and principles of  
11 equity. The total of all contingent fees for representing all claimants in a health  
12 care malpractice action may not exceed:
- 13 a. Forty percent of the first fifty thousand dollars recovered by the claimants;
  - 14 b. Thirty-three and one-third percent of the next fifty thousand dollars recovered  
15 by the claimants;
  - 16 c. Twenty-five percent of the next five hundred thousand dollars recovered by  
17 the claimants; and
  - 18 d. Fifteen percent of any amount on which the recovery by the claimants  
19 exceeds six hundred thousand dollars.
- 20 2. The limitations of this section apply regardless of whether the recovery is by  
21 settlement, arbitration, judgment, mediation, or any form of alternative dispute  
22 resolution. In a health care malpractice action involving a minor or incompetent  
23 person, a court retains the authority to authorize or approve a fee that is less than  
24 the maximum permitted under this section.
- 25 3. If periodic payments are awarded to the plaintiff under section 32-03.2-09, the  
26 court shall place a total value on these payments based upon the projected life  
27 expectancy of the plaintiff and include this amount in computing the total award  
28 from which fees are calculated under this section.