

Fifty-ninth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1386

Introduced by

Representatives Klemin, Berg, Kretschmar

Senators Kilzer, Nething, Trenbeath

1 A BILL for an Act to provide for mandatory alternative dispute resolution for professional  
2 malpractice claims; to amend and reenact section 32-42-01 of the North Dakota Century Code,  
3 relating to alternative dispute resolution definitions; to repeal sections 32-42-03 and 32-42-04 of  
4 the North Dakota Century Code, relating to alternative dispute resolution; and to provide an  
5 effective date.

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

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

9 **32-42-01. Definitions.** In this chapter:

- 10 1. ~~"Alternative dispute resolution" means the resolution of a health care malpractice~~  
11 ~~claim in a manner other than through a health care malpractice action.~~
- 12 ~~2.~~ "Claimant" means any person who alleges a health care malpractice claim, and  
13 any person on whose behalf the claim is alleged, including the decedent in the  
14 case of an action brought through or on behalf of an estate.
- 15 ~~3.~~ 2. "Health care malpractice action" means a claim for relief brought against a health  
16 care provider, or other defendant joined in the action, regardless of the theory of  
17 liability on which the claim is based, in which the claimant alleges a health care  
18 malpractice claim.
- 19 ~~4.~~ 3. "Health care malpractice claim" means a claim brought against a health care  
20 provider or other defendant joined in a claim alleging that an injury was suffered by  
21 the claimant as a result of health care negligence or gross negligence, breach of  
22 express or implied warranty or contract, failure to discharge a duty to warn, or  
23 failure to obtain consent arising from the provision of or failure to provide health  
24 care services.

- 1       ~~5-~~ 4. "Health care negligence" means an act or omission by a health care provider  
2                   which deviates from the applicable standard of care and causes an injury.
- 3       ~~6-~~ 5. "Health care provider" means a person who is licensed, certified, or otherwise  
4                   authorized by the law of this state to administer health care in the ordinary course  
5                   of business or practice of a profession.
- 6       ~~7-~~ 6. "Injury" means an injury, illness, disease, or other harm suffered by an individual  
7                   as a result of the provision of health care services by a health care provider.
- 8       ~~8-~~ 7. "Noneconomic damage" means damage arising from pain; suffering;  
9                   inconvenience; physical impairment; disfigurement; mental anguish; emotional  
10                  distress; fear of injury, loss, or illness; loss of society and companionship; loss of  
11                  consortium; injury to reputation; humiliation; and other nonpecuniary damage  
12                  incurred by an individual with respect to which a health care malpractice action or  
13                  claim is pursued.

14                   **SECTION 2. Mandatory alternative dispute resolution for professional**  
15 **malpractice claims.**

- 16           1. For purposes of this section, "professional malpractice claim" means a claim  
17 subject to subsection 3 of section 28-01-18 brought against a professional or other  
18 defendant joined in a claim alleging that an injury was suffered by the claimant as  
19 a result of professional misconduct, lack of skill or fidelity in professional or  
20 fiduciary duties, negligence or gross negligence, breach of express or implied  
21 warranty or contract, failure to discharge a duty to warn, or failure to obtain  
22 consent arising from the provision of or failure to provide services.
- 23           2. Before an action alleging a professional malpractice claim may be commenced,  
24 notice of a professional malpractice claim and a demand for a mandatory  
25 alternative dispute resolution must be served by the claimant upon the  
26 professional. The requirement for alternative dispute resolution in this section may  
27 be waived if all parties consent in writing before the commencement of the action.  
28 The supreme court shall establish a statewide mandatory alternative dispute  
29 resolution program for the resolution of professional malpractice claims. The  
30 supreme court may establish a statewide mandatory alternative dispute resolution  
31 program for the resolution of other claims as determined by the supreme court.

- 1           The supreme court shall adopt rules governing the practice, procedure, and  
2           jurisdiction for alternative dispute resolution programs established under this  
3           section. The rules must:
- 4           a.   Provide an equitable means for the payment of fees and expenses of the  
5           alternative dispute resolution processes; and
- 6           b.   Provide that the damages awarded to a party as a result of the alternative  
7           dispute resolution process may not exceed the damages allowed by law for  
8           that type of professional malpractice.
- 9           3.   The alternative dispute resolution methods provided for under the rules may  
10           include arbitration, private trials, neutral expert factfinding, mediation, minitrials,  
11           and any other methods developed by the supreme court. The methods provided  
12           must be nonbinding unless otherwise agreed to in a valid agreement between the  
13           parties.
- 14           4.   At the conclusion of the alternative dispute resolution process, a party to the  
15           process may initiate a civil action except to the extent otherwise provided in  
16           chapter 32-29.3. The parties must state in the pleadings that they have complied  
17           with the alternative dispute resolution process required by this section.
- 18           5.   Any party that fails to make a good-faith effort to resolve the professional  
19           malpractice claim through the alternative dispute resolution program is subject to  
20           sanctions by the court.
- 21           6.   The alternative dispute resolution process under this section stays the running of  
22           any applicable statute of limitations until ninety days after the date of the  
23           recommended decision or last offer in the alternative dispute resolution  
24           proceeding.

25           **SECTION 3. REPEAL.** Sections 32-42-03 and 32-42-04 of the North Dakota Century  
26 Code are repealed.

27           **SECTION 4. EFFECTIVE DATE.** This Act becomes effective on January 1, 2006.