

**FIRST ENGROSSMENT  
with Conference Committee Amendments****ENGROSSED HOUSE BILL NO. 1037**

Introduced by

Legislative Council

(Information Technology Committee)

1 A BILL for an Act to provide for year 2000 information requests; to create and enact a new  
2 section to chapter 32-12 of the North Dakota Century Code, relating to the liability of the state  
3 for a contract claim resulting from the failure of computers or computer equipment; and to  
4 amend and reenact subsection 3 of section 32-12.1-03 and subsection 3 of section 32-12.2-02  
5 of the North Dakota Century Code, relating to the liability of political subdivisions and the state  
6 for a claim resulting from the failure of computers or computer equipment as a result of the year  
7 2000 date change.

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

9 **SECTION 1. Year 2000 information requests - Use - Exceptions.**

- 10 1. Any public entity may gather year 2000 processing information from any person  
11 which relates to computer hardware or software, telecommunications networks, or  
12 devices containing a computer processor. An information request under this  
13 section may specify the person to gather responses to the request. Any year 2000  
14 processing response made to an information gathering request from a public entity  
15 is not a public record under section 44-04-18 or section 6 of article 11 of the  
16 Constitution of North Dakota and the response may not be directly or indirectly  
17 used, offered in evidence, or be subject to discovery in any civil action for  
18 damages in tort, contract, or for any other form of relief against the public entity or  
19 person.
- 20 2. This section does not preclude the public entity from using its requests for year  
21 2000 information or responses to year 2000 information requests as evidence of a  
22 good-faith effort to determine year 2000 compliance of its computer hardware or  
23 software, telecommunications networks, or devices containing a computer  
24 processor.

- 1           3. For purposes of this section, year 2000 processing includes calculating,  
2           comparing, sequencing, displaying, or storing; transmitting; or receiving data from,  
3           into, and between the twentieth and twenty-first centuries, and during the years  
4           1999 and 2000, and any leap year.
- 5           4. This section does not preclude any party from separately obtaining the information  
6           submitted in response to a year 2000 information request made under this section  
7           through other independent legal authority and using the separately obtained  
8           information in any action or proceeding.
- 9           5. This section does not apply to any information disclosed to the public with the  
10           express written consent of the party responding to a year 2000 information request  
11           under this section or disclosed by that party separately from a response to a year  
12           2000 information request under this section.
- 13           6. This section applies to all responses to any year 2000 information requests  
14           received by a public entity whether the response was received before or after the  
15           effective date of this Act.

16           **SECTION 2.** A new section to chapter 32-12 of the North Dakota Century Code is  
17 created and enacted as follows:

18           **Claims resulting from year 2000 date change computer failures prohibited.** The  
19 state is not liable for a claim arising upon contract which is the result of the failure of any  
20 computer hardware or software, telecommunications network, or device containing a computer  
21 processor to interpret, produce, calculate, generate, or account for a date that is compatible  
22 with the year 2000 date change if the state has made a good-faith effort to make the computer  
23 hardware or software, telecommunications network, or device containing a computer processor  
24 compliant with the year 2000 date change. For the purposes of this section, the state is  
25 presumed to have made a good-faith effort to make the computer hardware or software,  
26 telecommunications network, or device containing a computer processor compliant with the  
27 year 2000 date change if the results of testing establish that the computer hardware or  
28 software, telecommunications network, or device containing a computer processor meets the  
29 compliance requirements of this section, or if the state has sought and received an assurance  
30 of compliance from the manufacturer, or if the state has sought an assurance of compliance  
31 from the manufacturer, supplier, government or other reliable source when testing or receiving

1 an assurance from the manufacturer or supplier of the computer hardware or software,  
2 telecommunications network, or device containing a computer processor is not practicable. For  
3 the purposes of this section computer hardware or software, a telecommunications network, or  
4 device containing a computer processor is compliant with the year 2000 date change if:

- 5       1. All stored dates or programs contain century recognition, including dates stored in  
6       data bases and hardware or internal system dates in devices;
- 7       2. The program logic accommodates same century and multcentury formulas and  
8       date values; and
- 9       3. The year 2000 or any other leap year is correctly treated as a leap year within all  
10      program logic.

11       **SECTION 3. AMENDMENT.** Subsection 3 of section 32-12.1-03 of the North Dakota  
12 Century Code is amended and reenacted as follows:

- 13       3. A political subdivision is not liable for any claim based upon an act or omission of  
14       ~~an a political subdivision employee of a political subdivision,~~ exercising due care;  
15       in the execution of a valid or invalid statute or regulation, ~~whether or not such~~  
16       ~~statute or regulation be valid,~~ or based upon the exercise or performance,  
17       exercising due care, or the failure to exercise or perform a discretionary function or  
18       duty on the part of a political subdivision or its employees, whether or not the  
19       discretion involved ~~be is~~ abused. Specifically, a political subdivision or ~~an a~~  
20       political subdivision employee ~~thereof~~ is not liable for any claim that results from:
  - 21       a. The decision to undertake or the refusal to undertake any legislative or  
22       quasi-legislative act, including the decision to adopt or the refusal to adopt  
23       any statute, charter, ordinance, order, regulation, resolution, or resolve.
  - 24       b. The decision to undertake or the refusal to undertake any judicial or  
25       quasi-judicial act, including the decision to grant, to grant with conditions, to  
26       refuse to grant, or to revoke any license, permit, order, or other administrative  
27       approval or denial.
  - 28       c. The decision to perform or the refusal to exercise or perform a discretionary  
29       function or duty, whether or not such discretion ~~be is~~ abused and whether or  
30       not the statute, charter, ordinance, order, resolution, regulation, or resolve  
31       under which the discretionary function or duty is performed is valid or invalid.

- 1           d.   The failure to provide or maintain sufficient personnel, equipment, or other fire  
2           protection facilities; or doing any fire extinguishment or fire prevention work,  
3           rescue, resuscitation, or first aid; or any other official acts within the scope of  
4           official duties; provided, however, this ~~subsection~~ subdivision does not  
5           provide immunity for damages resulting from acts of gross negligence.
- 6           e.   The failure of any computer hardware or software, telecommunications  
7           network, or device containing a computer processor to interpret, produce,  
8           calculate, generate, or account for a date that is compatible with the year  
9           2000 date change if the political subdivision has made a good-faith effort to  
10          make the computer hardware or software, telecommunications network, or  
11          device containing a computer processor compliant with the year 2000 date  
12          change. For the purposes of this subdivision, a political subdivision is  
13          presumed to have made a good-faith effort to make the computer hardware or  
14          software, telecommunications network, or device containing a computer  
15          processor compliant with the year 2000 date change if the results of testing  
16          establish that the computer hardware or software, telecommunications  
17          network, or device containing a computer processor meets the compliance  
18          requirements of this section, or if the political subdivision has sought and  
19          received an assurance of compliance from the manufacturer or supplier, or if  
20          the political subdivision has sought an assurance of compliance from the  
21          manufacturer, supplier, government or other reliable source when testing or  
22          receiving an assurance from the manufacturer or supplier of the computer  
23          hardware or software, telecommunications network, or device containing a  
24          computer processor is not practicable. For purposes of this section, computer  
25          hardware or software, a telecommunications network, or device containing a  
26          computer processor is compliant with the year 2000 date change if:
- 27               (1)   All stored dates or programs contain century recognition, including  
28               dates stored in data bases and hardware or internal system dates in  
29               devices;
- 30               (2)   The program logic accommodates same century and multicentury  
31               formulas and date values; and

(3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic.

This subsection does not limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

**SECTION 4. AMENDMENT.** Subsection 3 of section 32-12.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:
  - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
  - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
  - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
  - d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
  - e. A claim resulting from the assessment and collection of taxes.
  - f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.

- 1 g. A claim resulting from any injury caused by a wild animal in its natural state.
- 2 h. A claim resulting from the condition of unimproved real property owned or
- 3 leased by the state.
- 4 i. A claim resulting from the loss of benefits or compensation due under a
- 5 program of public assistance.
- 6 j. A claim resulting from the reasonable care and treatment, or lack of care and
- 7 treatment, of a person at a state institution where reasonable use of available
- 8 appropriations has been made to provide care.
- 9 k. A claim resulting from damage to the property of a patient or inmate of a state
- 10 institution.
- 11 l. A claim resulting from any injury to a resident or an inmate of a state
- 12 institution if the injury is caused by another resident or inmate of that
- 13 institution.
- 14 m. A claim resulting from environmental contamination, except to the extent that
- 15 federal environmental law permits the claim.
- 16 n. A claim resulting from a natural disaster, an act of God, a military action, or an
- 17 act or omission taken as part of a disaster relief effort.
- 18 o. A claim for damage to property owned by the state.
- 19 p. A claim for liability assumed under contract, except this exclusion does not
- 20 apply to liability arising from a state employee's operation of a rental vehicle if
- 21 the vehicle is rented for a period of thirty days or less and the loss is not
- 22 covered by the state employee's personal insurance or by the vehicle rental
- 23 company.
- 24 q. A claim resulting from the failure of any computer hardware or software,
- 25 telecommunications network, or device containing a computer processor to
- 26 interpret, produce, calculate, generate, or account for a date that is
- 27 compatible with the year 2000 date change if the state has made a good-faith
- 28 effort to make the computer hardware or software, telecommunications
- 29 network, or device containing a computer processor compliant with the year
- 30 2000 date change. For the purposes of this subdivision, the state is
- 31 presumed to have made a good-faith effort to make the computer hardware or

1           software, telecommunications network, or device containing a computer  
2           processor compliant with the year 2000 date change if the results of testing  
3           establish that the computer hardware or software, telecommunications  
4           network, or device containing a computer processor meets the compliance  
5           requirements of this section, or if the state has sought and received an  
6           assurance of compliance from the manufacturer or supplier, or if the state has  
7           sought an assurance of compliance from the manufacturer, supplier,  
8           government or other reliable source when testing or receiving an assurance  
9           from the manufacturer or supplier of the computer hardware or software,  
10          telecommunications network, or device containing a computer processor. For  
11          purposes of this section, computer hardware or software, a  
12          telecommunications network, or device containing a computer processor is  
13          compliant with the year 2000 date change if:

- 14          (1)   All stored dates or programs contain century recognition, including  
15                dates stored in data bases and hardware or internal system dates in  
16                devices;  
17          (2)   The program logic accommodates same century and multicentury  
18                formulas and date values; and  
19          (3)   The year 2000 or any other leap year is correctly treated as a leap year  
20                within all program logic.