

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Office of Management and Budget)

1 A BILL for an Act to amend and reenact subsections 2 and 3 of section 32-12.2-02 of the
2 North Dakota Century Code, relating to liability of the state and the definition of discretionary
3 acts relating to design of a public project and claims arising from leased vehicles.

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

5 **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 32-12.2-02 of the North
6 Dakota Century Code are amended and reenacted as follows:

- 7 2. The liability of the state under this chapter, inclusive of all fees, interest, or costs, is
8 limited to a total of two hundred fifty thousand dollars per person and one million
9 dollars for any number of claims arising from any single occurrence. The state
10 may not be held liable, or be ordered to indemnify a state employee held liable, for
11 punitive or exemplary damages. Any amount of a judgment against the state in
12 excess of the two hundred fifty thousand dollar or one million dollar limit imposed
13 under this subsection may be paid only if the legislative assembly adopts an
14 appropriation authorizing payment of all or a portion of that amount. A claimant
15 may present proof of the judgment to the director of the office of management and
16 budget who shall include within the proposed budget for the office of management
17 and budget a request for payment for the portion of the judgment in excess of the
18 limit under this section at the next regular session of the legislative assembly after
19 the judgment is rendered.
- 20 3. Neither the state nor a state employee may be held liable under this chapter for
21 any of the following claims:
- 22 a. A claim based upon an act or omission of a state employee exercising due
23 care in the execution of a valid or invalid statute or rule.

- 1 b. A claim based upon a decision to exercise or perform or a failure to exercise
2 or perform a discretionary function or duty on the part of the state or its
3 employees, regardless of whether the discretion involved is abused or
4 whether the statute, order, rule, or resolution under which the discretionary
5 function or duty is performed is valid or invalid. Discretionary acts include
6 acts, errors, or omissions in the design of any public project ~~but do not include~~
7 ~~the drafting of plans and specifications that are provided to a contractor to~~
8 ~~construct a public project.~~
- 9 c. A claim resulting from the decision to undertake or the refusal to undertake
10 any legislative or quasi-legislative act, including the decision to adopt or the
11 refusal to adopt any statute, order, rule, or resolution.
- 12 d. A claim resulting from a decision to undertake or a refusal to undertake any
13 judicial or quasi-judicial act, including a decision to grant, to grant with
14 conditions, to refuse to grant, or to revoke any license, permit, order, or other
15 administrative approval or denial.
- 16 e. A claim relating to injury directly or indirectly caused by a person who is not
17 employed by the state.
- 18 f. A claim relating to injury directly or indirectly caused by the performance or
19 nonperformance of a public duty, including:
- 20 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing
21 to so act regarding compliance with or the violation of any law, rule,
22 regulation, or any condition affecting health or safety.
- 23 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
24 sentencing, parole, probation, or juvenile supervision.
- 25 (3) Providing or failing to provide law enforcement services in the ordinary
26 course of a state's law enforcement operations.
- 27 g. "Public duty" does not include action of the state or a state employee under
28 circumstances in which a special relationship can be established between the
29 state and the injured party. A special relationship is demonstrated if all of the
30 following elements exist:
- 31 (1) Direct contact between the state and the injured party.

- 1 (2) An assumption by the state, by means of promises or actions, of an
2 affirmative duty to act on behalf of the party who allegedly was injured.
- 3 (3) Knowledge on the part of the state that inaction of the state could lead
4 to harm.
- 5 (4) The injured party's justifiable reliance on the state's affirmative
6 undertaking, occurrence of the injury while the injured party was under
7 the direct control of the state, or the state action increases the risk of
8 harm.
- 9 h. A claim resulting from the assessment and collection of taxes.
- 10 i. A claim resulting from snow or ice conditions, water, or debris on a highway or
11 on a public sidewalk that does not abut a state-owned building or parking lot,
12 except when the condition is affirmatively caused by the negligent act of a
13 state employee.
- 14 j. A claim resulting from any injury caused by a wild animal in its natural state.
- 15 k. A claim resulting from the condition of unimproved real property owned or
16 leased by the state.
- 17 l. A claim resulting from the loss of benefits or compensation due under a
18 program of public assistance.
- 19 m. A claim resulting from the reasonable care and treatment, or lack of care and
20 treatment, of a person at a state institution where reasonable use of available
21 appropriations has been made to provide care.
- 22 n. A claim resulting from damage to the property of a patient or inmate of a state
23 institution.
- 24 o. A claim resulting from any injury to a resident or an inmate of a state
25 institution if the injury is caused by another resident or inmate of that
26 institution.
- 27 p. A claim resulting from environmental contamination, except to the extent that
28 federal environmental law permits the claim.
- 29 q. A claim resulting from a natural disaster, an act of God, a military action, or an
30 act or omission taken as part of a disaster relief effort.
- 31 r. A claim for damage to property owned by the state.

- 1 s. A claim for liability assumed under contract, except this exclusion does not
2 apply to liability arising from a state employee's operation of a rental vehicle if
3 the vehicle is rented for a period of thirty days or less and the loss is not
4 covered by the state employee's personal insurance or by the vehicle rental
5 company.