

September 1, 2020

Representative Corey Mock
Chairman, Information Technology Committee
P.O. Box 12542
Grand Forks, ND 58208

Senator Kyle Davison
Vice Chairman, Information Technology Committee
4918 Meadow Creek Drive South
Fargo, ND 58104

Dear Chairman Mock and Vice Chairman Davison,

On behalf of Computing Technology Industry Association (CompTIA)¹, the leading association for the global information technology (IT) industry, we are writing in support of modernizing the State's contract liability statute. We appreciate the Information Technology Committee's willingness to remedy the challenges that IT companies face when providing IT products and services to the State of North Dakota.

The current liability statute in North Dakota, which does not equitably apply risks and liabilities between vendors and the State, is out of step with commercial and public sector market best practices and serves as a significant disincentive for responsible vendor participation. Alternative to North Dakota's current statute, many state governments have recognized the benefit of equitable risk-sharing through a limitation of liability that is rationally related to the economic benefit of the engagement. Contracts with high or no liability limits tend to skew the overall State contracting process by reducing the number of competitive bids by responsible performing vendors, for whom it would be irresponsible to underwrite extraordinary risk with no rational relation to incoming revenue.

Said another way: clients are least likely to receive best value – in terms of quality of service or in terms of lowest price – when mandating disadvantageous terms, as those terms will either artificially restrict the quality of the vendor pool, prompt vendors to price in the risk or both. Thus, a reasonable limitation on liability – both in terms of consequential and direct damages— is in the State's own direct interest, as it will foster participation by qualified vendors in State solicitations for bids, reduce the length of negotiations, and lower cost to the State.

While we support the Committee's effort in updating the statute, we strongly encourage the Committee to set a limitation of vendor liability for direct damages of no greater than two times the value of a contract. Such a limitation would be consistent with applicable market norms, including other states around the country, and is generally regarded as a best practice by the IT industry. We also encourage the Committee to limit exemptions or "carve-outs" to the limitation of liability provision. Including overly prescriptive breach provisions in statute would effectively limit the benefits of a limitation of liability. It is

¹CompTIA is the voice of the information technology industry. With approximately 2,000 member companies, 3,000 academic and training partners and nearly 2 million IT certifications issued, CompTIA is dedicated to advancing industry growth through educational programs, market research, networking events, professional certifications, and public policy advocacy. CompTIA works to promote investment and innovation, market access, robust cybersecurity solutions, streamlined procurement, and a skilled IT workforce.

also worth noting that the National Association of Chief Information Officers (NASCIO)² has indicated that the trend among states is recognition that states benefit from a willingness to agree to limit the nature of damages available for recovery and to commit to limits of liability that closely relate to contract value.

We thank the Information Technology Committee for raising this issue, and CompTIA wishes to remain a resource to the Committee as the legislative process moves forward. If you have questions, please feel free to contact Liam Crawford, Senior Manager Public Sector at CompTIA.

Sincerely,



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CC: Levi Kinnischtzke, North Dakota Legislative Council
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Bismarck, North Dakota 58505

² The National Association of State Chief Information Officers (NASCIO) represents state chief information officers (CIOs) and information technology executives and managers from the states, territories, and District of Columbia. NASCIO's mission is to foster government excellence through quality business practices, information management and technology policy.