PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 1, after "enact" insert "a new section to chapter 28-01.3 and"

Page 1, line 3, after "equipment" insert "and to the liability of a manufacturer for a year 2000 claim" and after "reenact" insert "sections 28-01.3-04, 28-01.3-06,"

Page 1, line 4, after "32-12.1-03" insert a comma

Page 1, line 6, after "change" insert "and to the liability of a nonmanufacturing seller for a year 2000 claim and the determination of a defective product"

Page 1, after line 7, insert:

"**SECTION 1.** A new section to chapter 28-01.3 of the North Dakota Century Code is created and enacted as follows:

Claims resulting from year 2000 date change computer failures prohibited. Except to the extent liability is expressly assumed under warranty or contract, a manufacturer is not liable for a claim that is the result of the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the manufacturer has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this section, a manufacturer is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if all the following conditions are met:

1. The data structures provide four-digit date recognition;

2. Any stored data contains date century recognition, including data stored in data bases and hardware or device internal system dates;

3. The calculations and program logic accommodate same century and multicentury formulas and data values;

4. The interfaces prevent noncompliant dates and data from entering or exiting any system operated or used by an initial user or consumer;

5. The user interfaces accurately show four-digit years when critical to business functions; and

6. The year 2000 or any other leap year is correctly treated as a leap year within all calculation and calendar logic.

SECTION 2. AMENDMENT. Section 28-01.3-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-01.3-04. Liability of nonmanufacturing sellers.

1. In any products liability action or an action involving a year 2000 claim maintained against a seller of a product who did not manufacture the

product, the seller shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.

2. After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:

    a. That the certifying seller exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.

    b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.

    c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.

3. In an action involving a year 2000 claim, a certifying seller who is not dismissed is entitled to the same presumption of a good-faith effort as a manufacturer.

~~3.~~ 4. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying seller if the plaintiff can show any of the following:

    a. That the applicable statute of limitation bars a product liability action against the manufacturer of the product allegedly causing the injury, death, or damage.

    b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.

5. In the event a certifying seller is reinstated in in action involving a year 2000 claim, a certifying seller is entitled to the same presumption of a good-faith effort as a manufacturer and subject to the same conditions as a manufacturer.

SECTION 3. AMENDMENT. Section 28-01.3-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-01.3-06. Determination of defective product. No product may be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer. This section does not apply to a product involved in a year 2000 claim."

Page 1, line 16, after the underscored comma insert "the state is presumed to have made a good-faith effort to make the", after "computer" insert "hardware", and after "or" insert "software,"

Page 1 , line 17, replace "equipment" with "networks,", replace "are" with "containing a computer processor", and after "if" insert "all of the following conditions are met"

Page 1, line 18, replace the first "date" with "data" and replace the second underscored period with an underscored semicolon

Page 1, line 20, replace the underscored period with an underscored semicolon

Page 1, line 22, replace the underscored period with an underscored semicolon

Page 1, line 24, replace the underscored period with an underscored semicolon

Page 2, line 2, replace the underscored period with "; and"

Page 3, line 7, after the underscored comma insert "a political subdivision is presumed to have made a good-faith effort to make the", after "computer" insert "hardware", and after "or" insert "software,"

Page 3, line 8, replace "equipment" with "networks,", replace "are" with "containing a computer processor"

Page 3, line 9, after "if" insert "all of the following conditions are met"

Page 3, line 10, replace the first "date" with "data" and replace the underscored period with an underscored semicolon

Page 3, line 12, replace the underscored period with an underscored semicolon

Page 3, line 14, replace the underscored period with an underscored semicolon

Page 3, line 16, replace the underscored period with an underscored semicolon

Page 3, line 18, replace the underscored period with "; and"

Page 5, line 17, after the underscored comma insert "the state is presumed to have made a good-faith effort to make the", after "computer" insert "hardware", and after "or" insert "software,"

Page 5, line 18, replace "equipment" with "networks," and replace "are" with "containing a computer processor"

Page 5, line 19, after "if" insert "all of the following conditions are met"

Page 5, line 20, replace the first "date" with "data" and replace the underscored period with an underscored semicolon

Page 5, line 22, replace the underscored period with an underscored semicolon

Page 5, line 24, replace the underscored period with an underscored semicolon

Page 5, line 26, replace the underscored period with an underscored semicolon

Page 5, line 28, replace the underscored period with "; and"

Renumber accordingly