Fifty-sixth
Legislative Assembly   ENGROSSED HOUSE BILL NO. 1037
of North Dakota

Introduced by

    Legislative Council

    (Information Technology Committee)

1   A BILL for an Act to create and enact a new section to chapter 28-01.3 and a new section to

2   chapter 32-12 of the North Dakota Century Code, relating to the liability of the state for a

3   contract claim resulting from the failure of computers or computer equipment and to the liability

4   of a manufacturer for a year 2000 claim; and to amend and reenact sections 28-01.3-04,

5   28-01.3-06, subsection 3 of section 32-12.1-03, and subsection 3 of section 32-12.2-02 of the

6   North Dakota Century Code, relating to the liability of political subdivisions and the state for a

7   claim resulting from the failure of computers or computer equipment as a result of the year

8   2000 date change and to the liability of a nonmanufacturing seller for a year 2000 claim and the

9   determination of a defective product.

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

11   **SECTION 1.** A new section to chapter 28-01.3 of the North Dakota Century Code is

12   created and enacted as follows:

13   **Claims resulting from year 2000 date change computer failures prohibited.** Except

14   to the extent liability is expressly assumed under warranty or contract, a manufacturer is not

15   liable for a claim that is the result of the failure of any computer hardware or software,

16   telecommunications network, or device containing a computer processor to interpret, produce,

17   calculate, generate, or account for a date that is compatible with the year 2000 date change if

18   the manufacturer has made a good-faith effort to make the computer hardware or software,

19   telecommunications network, or device containing a computer processor compliant with the

20   year 2000 date change. For the purposes of this section, a manufacturer is presumed to have

21   made a good-faith effort to make the computer hardware or software, telecommunications

22   network, or device containing a computer processor compliant with the year 2000 date change

23   if all the following conditions are met:

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

1   2.   Any stored data contains date century recognition, including data stored in data
2   bases and hardware or device internal system dates;
3   3.   The calculations and program logic accommodate same century and multicentury
4   formulas and data values;
5   4.   The interfaces prevent noncompliant dates and data from entering or exiting any
6   system operated or used by an initial user or consumer;
7   5.   The user interfaces accurately show four-digit years when critical to business
8   functions; and
9   6.   The year 2000 or any other leap year is correctly treated as a leap year within all
10   calculation and calendar logic.
11   **SECTION 2. AMENDMENT.** Section 28-01.3-04 of the 1997 Supplemnt to the North
12   Dakota Century Code is amended and reenacted as follows:
13   **28-01.3-04. Liability of nonmanufacturing sellers.**
14   1.   In any products liability action or an action involving a year 2000 claim maintained
15   against a seller of a product who did not manufacture the product, the seller shall
16   upon answering or otherwise pleading file an affidavit certifying the correct identity
17   of the manufacturer of the product allegedly causing the personal injury, death, or
18   damage to property.
19   2.   After the plaintiff has filed a complaint against the manufacturer and the
20   manufacturer has or is required to have answered or otherwise pleaded, the court
21   shall order the dismissal of the claim against the certifying seller, unless the
22   plaintiff can show any of the following:
23   a.   That the certifying seller exercised some significant control over the design or
24   manufacture of the product, or provided instructions or warnings to the
25   manufacturer relative to the alleged defect in the product which caused the
26   personal injury, death, or damage to property.
27   b.   That the certifying seller had actual knowledge of the defect in the product
28   which caused the personal injury, death, or damage to property.
29   c.   That the certifying seller created the defect in the product which caused the
30   personal injury, death, or damage to property.

1   3.   In an action involving a year 2000 claim, a certifying seller who is not dismissed is

2   entitled to the same presumption of a good-faith effort as a manufacturer.

3   3. 4.   The plaintiff may at any time prior to the beginning of the trial move to vacate the

4   order of dismissal and reinstate the certifying seller if the plaintiff can show any of

5   the following:

6   a.   That the applicable statute of limitation bars a product liability action against

7   the manufacturer of the product allegedly causing the injury, death, or

8   damage.

9   b.   That the identity of the manufacturer given to the plaintiff by the certifying

10   defendant was incorrect.

11   5.   In the event a certifying seller is reinstated in in action involving a year 2000 claim,

12   a certifying seller is entitled to the same presumption of a good-faith effort as a

13   manufacturer and subject to the same conditions as a manufacturer.

14   **SECTION 3. AMENDMENT.** Section 28-01.3-06 of the 1997 Supplement to the North

15   Dakota Century Code is amended and reenacted as follows:

16   **28-01.3-06. Determination of defective product.** No product may be considered to

17   have a defect or to be in a defective condition, unless at the time the product was sold by the

18   manufacturer or other initial seller, there was a defect or defective condition in the product

19   which made the product unreasonably dangerous to the user or consumer. This section does

20   not apply to a product involved in a year 2000 claim."

21   **SECTION 4.** A new section to chapter 32-12 of the North Dakota Century Code is

22   created and enacted as follows:

23   **Claims resulting from year 2000 date change computer failures prohibited.** The

24   state is not liable for a claim arising upon contract which is the result of the failure of any

25   computer hardware or software, telecommunications network, or device containing a computer

26   processor to interpret, produce, calculate, generate, or account for a date that is compatible

27   with the year 2000 date change if the state has made a good-faith effort to make the computer

28   hardware or software, telecommunications network, or device containing a computer processor

29   compliant with the year 2000 date change. For the purposes of this section, the state is

30   presumed to have made a good-faith effort to make the computer hardware or software,

1   telecommunications networks, or devices containing a computer processor compliant with the

2   year 2000 date change if all of the following conditions are met:

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

4   2.   Any stored data contains date century recognition, including data stored in data

5   bases and hardware or device internal system dates;

6   3.   The calculations and program logic accommodate same century and multicentury

7   formulas and data values;

8   4.   The interfaces prevent noncompliant dates and data from entering or exiting any

9   state system;

10   5.   The user interfaces accurately show four-digit years when critical to business

11   functions; and

12   6.   The year 2000 or any other leap year is correctly treated as a leap year within all

13   calculation and calendar logic.

14   **SECTION 5. AMENDMENT.** Subsection 3 of section 32-12.1-03 of the North Dakota

15 Century Code is amended and reenacted as follows:

16   3.   A political subdivision is not liable for any claim based upon an act or omission of

17   ~~an~~ a political subdivision employee ~~of a political subdivision,~~ exercising due care~~,~~

18   in the execution of a valid or invalid statute or regulation~~, whether or not such~~

19   ~~statute or regulation be valid,~~ or based upon the exercise or performance,

20   exercising due care, or the failure to exercise or perform a discretionary function or

21   duty on the part of a political subdivision or its employees, whether or not the

22   discretion involved ~~be~~ is abused. Specifically, a political subdivision or ~~an~~ a

23   political subdivision employee ~~thereof~~ is not liable for any claim that results from:

24   a.   The decision to undertake or the refusal to undertake any legislative or

25   quasi-legislative act, including the decision to adopt or the refusal to adopt

26   any statute, charter, ordinance, order, regulation, resolution, or resolve.

27   b.   The decision to undertake or the refusal to undertake any judicial or

28   quasi-judicial act, including the decision to grant, to grant with conditions, to

29   refuse to grant, or to revoke any license, permit, order, or other administrative

30   approval or denial.

1   c.   The decision to perform or the refusal to exercise or perform a discretionary

2   function or duty, whether or not such discretion ~~be~~ is abused and whether or

3   not the statute, charter, ordinance, order, resolution, regulation, or resolve

4   under which the discretionary function or duty is performed is valid or invalid.

5   d.   The failure to provide or maintain sufficient personnel, equipment, or other fire

6   protection facilities; or doing any fire extinguishment or fire prevention work,

7   rescue, resuscitation, or first aid; or any other official acts within the scope of

8   official duties; provided, however, this ~~subsection~~ subdivision does not

9   provide immunity for damages resulting from acts of gross negligence.

10   e.   The failure of any computer hardware or software, telecommunications

11   network, or device containing a computer processor to interpret, produce,

12   calculate, generate, or account for a date that is compatible with the year

13   2000 date change if the political subdivision has made a good-faith effort to

14   make the computer hardware or software, telecommunications network, or

15   device containing a computer processor compliant with the year 2000 date

16   change. For the purposes of this subdivision, a political subdivision is

17   presumed to have made a good-faith effort to make the computer hardware or

18   software, telecommunications networks, or devices containing a computer

19   processor compliant with the year 2000 date change if all of the following

20   conditions are met:

21   (1)   The data structures provide four-digit date recognition;

22   (2)   Any stored data contains date century recognition, including data

23   stored in data bases and hardware or device internal system dates;

24   (3)   The calculations and program logic accommodate same century and

25   multicentury formulas and data values;

26   (4)   The interfaces prevent noncompliant dates and data from entering or

27   exiting any system operated or used by the political subdivision;

28   (5)   The user interfaces accurately show four-digit years when critical to

29   business functions; and

30   (6)   The year 2000 or any other leap year is correctly treated as a leap year

31   within all calculation and calendar logic.

1   This subsection does not limit the liability of a political subdivision or an employee

2   thereof for a personal injury arising out of the execution of any legislative or

3   quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

4   **SECTION 6. AMENDMENT.** Subsection 3 of section 32-12.2-02 of the 1997

5   Supplement to the North Dakota Century Code is amended and reenacted as follows:

6   3.   Neither the state nor a state employee may be held liable under this chapter for

7   any of the following claims:

8   a.   A claim based upon an act or omission of a state employee exercising due

9   care in the execution of a valid or invalid statute or rule.

10   b.   A claim based upon a decision to exercise or perform or a failure to exercise

11   or perform a discretionary function or duty on the part of the state or its

12   employees, regardless of whether the discretion involved is abused or

13   whether the statute, order, rule, or resolution under which the discretionary

14   function or duty is performed is valid or invalid. Discretionary acts include

15   acts, errors, or omissions in the design of any public project but do not include

16   the drafting of plans and specifications that are provided to a contractor to

17   construct a public project.

18   c.   A claim resulting from the decision to undertake or the refusal to undertake

19   any legislative or quasi-legislative act, including the decision to adopt or the

20   refusal to adopt any statute, order, rule, or resolution.

21   d.   A claim resulting from a decision to undertake or a refusal to undertake any

22   judicial or quasi-judicial act, including a decision to grant, to grant with

23   conditions, to refuse to grant, or to revoke any license, permit, order, or other

24   administrative approval or denial.

25   e.   A claim resulting from the assessment and collection of taxes.

26   f.   A claim resulting from snow or ice conditions, water, or debris on a highway

27   or on a public sidewalk that does not abut a state-owned building or parking

28   lot, except when the condition is affirmatively caused by the negligent act of a

29   state employee.

30   g.   A claim resulting from any injury caused by a wild animal in its natural state.

1   h.   A claim resulting from the condition of unimproved real property owned or

2   leased by the state.

3   i.   A claim resulting from the loss of benefits or compensation due under a

4   program of public assistance.

5   j.   A claim resulting from the reasonable care and treatment, or lack of care and

6   treatment, of a person at a state institution where reasonable use of available

7   appropriations has been made to provide care.

8   k.   A claim resulting from damage to the property of a patient or inmate of a state

9   institution.

10   l.   A claim resulting from any injury to a resident or an inmate of a state

11   institution if the injury is caused by another resident or inmate of that

12   institution.

13   m.   A claim resulting from environmental contamination, except to the extent that

14   federal environmental law permits the claim.

15   n.   A claim resulting from a natural disaster, an act of God, a military action, or an

16   act or omission taken as part of a disaster relief effort.

17   o.   A claim for damage to property owned by the state.

18   p.   A claim for liability assumed under contract, except this exclusion does not

19   apply to liability arising from a state employee's operation of a rental vehicle if

20   the vehicle is rented for a period of thirty days or less and the loss is not

21   covered by the state employee's personal insurance or by the vehicle rental

22   company.

23   q.   A claim resulting from the failure of any computer hardware or software,

24   telecommunications network, or device containing a computer processor to

25   interpret, produce, calculate, generate, or account for a date that is

26   compatible with the year 2000 date change if the state has made a good-faith

27   effort to make the computer hardware or software, telecommunications

28   network, or device containing a computer processor compliant with the year

29   2000 date change. For the purposes of this subdivision, the state is

30   presumed to have made a good-faith effort to make the computer hardware or

31   software, telecommunications networks, or devices containing a computer

1   processor compliant with the year 2000 date change if all of the following

2   conditions are met:

3   (1)   The data structures provide four-digit date recognition;

4   (2)   Any stored data contains date century recognition, including data

5   stored in data bases and hardware or device internal system dates;

6   (3)   The calculations and program logic accommodate same century and

7   multicentury formulas and data values;

8   (4)   The interfaces prevent noncompliant dates and data from entering or

9   exiting any state system;

10   (5)   The user interfaces accurately show four-digit years when critical to

11   business functions; and

12   (6)   The year 2000 or any other leap year is correctly treated as a leap year

13   within all calculation and calendar logic.