

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1037
(Legislative Council)
(Information Technology Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article 11 of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
3. For purposes of this section, year 2000 processing includes calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action or proceeding.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.

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

Claims resulting from year 2000 date change computer failures prohibited. The state is not liable for a claim arising upon contract which 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 state 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, the state 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 the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

1. All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
2. The program logic accommodates same century and mult century 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.

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

3. A political subdivision is not liable for any claim based upon an act or omission of ~~an~~ a political subdivision employee of a political subdivision, exercising due care, in the execution of a valid or invalid statute or regulation, ~~whether or not such statute or regulation be valid~~, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved ~~be~~ is abused. Specifically, a political subdivision or ~~an~~ a political subdivision employee thereof is not liable for any claim that results from:
 - a. 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, charter, ordinance, order, regulation, resolution, or resolve.
 - b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
 - c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion ~~be~~ is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
 - d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this ~~subsection~~ subdivision does not provide immunity for damages resulting from acts of gross negligence.
 - e. 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 political subdivision 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 subdivision, a political subdivision 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 the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

- (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
- (2) The program logic accommodates same century and mult century 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.

- g. A claim resulting from any injury caused by a wild animal in its natural state.
- h. A claim resulting from the condition of unimproved real property owned or leased by the state.
- i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
- j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
- k. A claim resulting from damage to the property of a patient or inmate of a state institution.
- l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- o. A claim for damage to property owned by the state.
- p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.
- q. A claim resulting from 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 state 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 subdivision, the state 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 the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:
 - (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
 - (2) The program logic accommodates same century and mult century 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1037.

House Vote: Yeas 88 Nays 7 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State