21.0125.01000

Sixty-seventh
Legislative Assembly
of North Dakota

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Information Technology Committee
July 2020

Introduced by

A BILL for an Act to amend and reenact section 32-12.2-15 of the North Dakota Century Code, relating to contracts limiting liability to the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.2-15 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-15. Contracts limiting liability to the state.

1. Notwithstanding any provision in this chapter to the contrary, an agency may agree to limit the liability of a contractor to the state if the agency determines such services or products cannot be effectively obtained without such limitation and the limitation does not pose any significant risk of loss to the state and is in the best interests of the state. The agency, in consultation with the office of management and budget and the attorney general's office, shall prepare a written documentation before agreeing to any liability limitation. An agency's authority to agree to a limitation of liability is limited to contracts for the purchase or lease of, or services related to, software, communication, ~~or~~ electronic equipment, and economic forecasting ~~and may only limit the agency's~~.
2. An agency may limit its ability to recover indirect consequential damages.
3. If the extent of potential direct loss is unknown, an agency may agree to limit direct damages to a reasonably estimated amount commensurate with the foreseeable risk of loss to the state. The agreed upon amount may not be less than twice the total value of the contract. The liquidated damages and retainage provisions for delay, missed deadlines, and other breaches are not subject to a general limitation on direct or indirect damages authorized under this section.

4. A contract under this section may not limit any ~~direct~~ loss to the state resulting from fraud or other intentional or willful misconduct, breach of confidentiality obligations, or loss resulting from tangible property damage or personal injury.