

BILL NO.

Introduced by

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

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

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

6 **32-12.2-15. Contracts limiting liability to the state.**

- 7 1. Notwithstanding any provision in this chapter to the contrary, an agency may agree to
8 limit the liability of a contractor to the state if the agency determines such services or
9 products cannot be effectively obtained without such limitation and the limitation does
10 not pose any significant risk of loss to the state and is in the best interests of the state.
11 The agency, in consultation with the office of management and budget and the
12 attorney general's office, shall prepare a written documentation before agreeing to any
13 liability limitation. An agency's authority to agree to a limitation of liability is limited to
14 contracts for the purchase or lease of, or services related to, software, communication,
15 or electronic equipment, and economic forecasting and may only limit the agency's.
16 2. An agency may limit its ability to recover indirect consequential damages.
17 3. If the extent of potential direct loss is unknown, an agency may agree to limit direct
18 damages to a reasonably estimated amount commensurate with the foreseeable risk
19 of loss to the state. The amount must be equal to twice the total value of the contract,
20 unless all parties to the contract agree to an alternative amount. Any agreed upon
21 amount that is less than twice the value of the contract must be approved by the
22 director of the office of management and budget. The liquidated damages and
23 retainage provisions for delay, missed deadlines, and other breaches are not subject
24 to a general limitation on direct or indirect damages authorized under this section.

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