



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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COMMITTEES:
Appropriations

February 9, 2021

Chairman Mike Lefor and Members of the House Industry, Business and Labor Committee,

I'm before you today as chairman of the Information Technology Committee; on behalf of our eleven legislative members I'm honored to introduce HB 1316.

The framework for this legislation was brought to our committee by the Risk Management Division of OMB in consultation with private sector technology vendors. After thorough discussion, we ultimately gave this concept unanimous support to be introduced during the 2021 legislative session.

NDCC 32-12.2-15 allows state agencies to contractually limit the liability of a vendor for **indirect** loss resulting from the purchase or lease of certain products and services. Agencies must consult with the Attorney General and OMB regarding any contractual provisions and potential risk of loss to the state.

However, state law prohibits agencies from contractually limiting any potential **direct** loss. Even though IT direct loss is often minimal, if not non-existent, beyond the cost of the program, the inability for liability to be capped is a deterrent for some companies to even submit a bid.

Representatives from OMB's Risk Management Division and private sector contractors will address these incidents and growing concerns in a few moments.

HB 1316 would make North Dakota's risk management and liability laws consistent with most other states and automatically limit vendor liability for **some direct loss** of technology projects at two-times the contract amount, unless otherwise agreed upon by both parties. Any agency wishing to reduce vendor liability below two-times the contract amount would first need approval from the director of OMB.

As mentioned, this limited liability cap does not apply to liquidated damages or retainage provisions for delay, missed deadlines, or other breaches such as fraud, intentional or willful misconduct, breach of confidentiality obligations, or loss resulting from tangible property damage or personal injury.

I appreciate your time and consideration of HB 1316 and hope your committee also gives these updated liability protections a favorable recommendation.