

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1037

Introduced by

Legislative Council

(Information Technology Committee)

1 A BILL for an Act to create and enact a new section to chapter 32-12 and a new section to
2 chapter 44-04 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 year 2000
4 information requests; and to amend and reenact subsection 3 of section 32-12.1-03 and
5 subsection 3 of section 32-12.2-02 of the North Dakota Century Code, relating to the liability of
6 political subdivisions and the state for a claim resulting from the failure of computers or
7 computer equipment as a result of the year 2000 date change.

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

9 **SECTION 1.** A new section to chapter 32-12 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Claims resulting from year 2000 date change computer failures prohibited.** The
12 state is not liable for a claim arising upon contract which is the result of the failure of any
13 computer hardware or software, telecommunications network, or device containing a computer
14 processor to interpret, produce, calculate, generate, or account for a date that is compatible
15 with the year 2000 date change if the state has made a good-faith effort to make the computer
16 hardware or software, telecommunications network, or device containing a computer processor
17 compliant with the year 2000 date change. For the purposes of this section, the state is
18 presumed to have made a good-faith effort to make the computer hardware or software,
19 telecommunications networks, or devices containing a computer processor compliant with the
20 year 2000 date change if it has attempted compliance through independent testing or
21 assurances sought or assurances received from manufacturers or suppliers. For the purposes
22 of this section, computer hardware or software, telecommunications networks or devices
23 containing a computer processor are compliant with the year 2000 date change if:

- 1 1. All stored dates or programs contain century recognition, including dates stored in
2 data bases and hardware or internal system dates in devices;
- 3 2. The program logic accommodates same century and mult century formulas and
4 date values; and
- 5 3. The year 2000 or any other leap year is correctly treated as a leap year within all
6 program logic.

7 **SECTION 2. AMENDMENT.** Subsection 3 of section 32-12.1-03 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 3. A political subdivision is not liable for any claim based upon an act or omission of
10 ~~an a political subdivision~~ employee ~~of a political subdivision~~, exercising due care,
11 in the execution of a valid or invalid statute or regulation, ~~whether or not such~~
12 ~~statute or regulation be valid~~, or based upon the exercise or performance,
13 exercising due care, or the failure to exercise or perform a discretionary function or
14 duty on the part of a political subdivision or its employees, whether or not the
15 discretion involved ~~be~~ is abused. Specifically, a political subdivision or ~~an a~~
16 political subdivision employee ~~thereof~~ is not liable for any claim that results from:
 - 17 a. The decision to undertake or the refusal to undertake any legislative or
18 quasi-legislative act, including the decision to adopt or the refusal to adopt
19 any statute, charter, ordinance, order, regulation, resolution, or resolve.
 - 20 b. The decision to undertake or the refusal to undertake any judicial or
21 quasi-judicial act, including the decision to grant, to grant with conditions, to
22 refuse to grant, or to revoke any license, permit, order, or other administrative
23 approval or denial.
 - 24 c. The decision to perform or the refusal to exercise or perform a discretionary
25 function or duty, whether or not such discretion ~~be~~ is abused and whether or
26 not the statute, charter, ordinance, order, resolution, regulation, or resolve
27 under which the discretionary function or duty is performed is valid or invalid.
 - 28 d. The failure to provide or maintain sufficient personnel, equipment, or other fire
29 protection facilities; or doing any fire extinguishment or fire prevention work,
30 rescue, resuscitation, or first aid; or any other official acts within the scope of

- 1 official duties; provided, however, this ~~subsection~~ subdivision does not
2 provide immunity for damages resulting from acts of gross negligence.
- 3 e. The failure of any computer hardware or software, telecommunications
4 network, or device containing a computer processor to interpret, produce,
5 calculate, generate, or account for a date that is compatible with the year
6 2000 date change if the political subdivision has made a good-faith effort to
7 make the computer hardware or software, telecommunications network, or
8 device containing a computer processor compliant with the year 2000 date
9 change. For the purposes of this subdivision, a political subdivision is
10 presumed to have made a good-faith effort to make the computer hardware or
11 software, telecommunications networks, or devices containing a computer
12 processor compliant with the year 2000 date change if it has attempted
13 compliance through independent testing or assurances sought or assurances
14 received from manufacturers or suppliers. For the purposes of this section,
15 computer hardware or software, telecommunications networks or devices
16 containing a computer processor are compliant with the year 2000 date
17 change if:
- 18 (1) All stored dates or programs contain century recognition, including
19 dates stored in data bases and hardware or internal system dates in
20 devices;
- 21 (2) The program logic accommodates same century and multicentury
22 formulas and date values; and
- 23 (3) The year 2000 or any other leap year is correctly treated as a leap year
24 within all program logic.

25 This subsection does not limit the liability of a political subdivision or an employee
26 thereof for a personal injury arising out of the execution of any legislative or
27 quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

28 **SECTION 3. AMENDMENT.** Subsection 3 of section 32-12.2-02 of the 1997
29 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 30 3. Neither the state nor a state employee may be held liable under this chapter for
31 any of the following claims:

- 1 a. A claim based upon an act or omission of a state employee exercising due
2 care in the execution of a valid or invalid statute or rule.
- 3 b. A claim based upon a decision to exercise or perform or a failure to exercise
4 or perform a discretionary function or duty on the part of the state or its
5 employees, regardless of whether the discretion involved is abused or
6 whether the statute, order, rule, or resolution under which the discretionary
7 function or duty is performed is valid or invalid. Discretionary acts include
8 acts, errors, or omissions in the design of any public project but do not include
9 the drafting of plans and specifications that are provided to a contractor to
10 construct a public project.
- 11 c. A claim resulting from the decision to undertake or the refusal to undertake
12 any legislative or quasi-legislative act, including the decision to adopt or the
13 refusal to adopt any statute, order, rule, or resolution.
- 14 d. A claim resulting from a decision to undertake or a refusal to undertake any
15 judicial or quasi-judicial act, including a decision to grant, to grant with
16 conditions, to refuse to grant, or to revoke any license, permit, order, or other
17 administrative approval or denial.
- 18 e. A claim resulting from the assessment and collection of taxes.
- 19 f. A claim resulting from snow or ice conditions, water, or debris on a highway
20 or on a public sidewalk that does not abut a state-owned building or parking
21 lot, except when the condition is affirmatively caused by the negligent act of a
22 state employee.
- 23 g. A claim resulting from any injury caused by a wild animal in its natural state.
- 24 h. A claim resulting from the condition of unimproved real property owned or
25 leased by the state.
- 26 i. A claim resulting from the loss of benefits or compensation due under a
27 program of public assistance.
- 28 j. A claim resulting from the reasonable care and treatment, or lack of care and
29 treatment, of a person at a state institution where reasonable use of available
30 appropriations has been made to provide care.

- 1 k. A claim resulting from damage to the property of a patient or inmate of a state
2 institution.
- 3 l. A claim resulting from any injury to a resident or an inmate of a state
4 institution if the injury is caused by another resident or inmate of that
5 institution.
- 6 m. A claim resulting from environmental contamination, except to the extent that
7 federal environmental law permits the claim.
- 8 n. A claim resulting from a natural disaster, an act of God, a military action, or an
9 act or omission taken as part of a disaster relief effort.
- 10 o. A claim for damage to property owned by the state.
- 11 p. A claim for liability assumed under contract, except this exclusion does not
12 apply to liability arising from a state employee's operation of a rental vehicle if
13 the vehicle is rented for a period of thirty days or less and the loss is not
14 covered by the state employee's personal insurance or by the vehicle rental
15 company.
- 16 q. A claim resulting from the failure of any computer hardware or software,
17 telecommunications network, or device containing a computer processor to
18 interpret, produce, calculate, generate, or account for a date that is
19 compatible with the year 2000 date change if the state has made a good-faith
20 effort to make the computer hardware or software, telecommunications
21 network, or device containing a computer processor compliant with the year
22 2000 date change. For the purposes of this subdivision, the state is
23 presumed to have made a good-faith effort to make the computer hardware or
24 software, telecommunications networks, or devices containing a computer
25 processor compliant with the year 2000 date change if it has attempted
26 compliance through independent testing or assurances sought or assurances
27 received from manufacturers or suppliers. For the purposes of this section,
28 computer hardware or software, telecommunications networks or devices
29 containing a computer processor are compliant with the year 2000 date
30 change if:

- 1 (1) All stored dates or programs contain century recognition, including
2 dates stored in data bases and hardware or internal system dates in
3 devices;
- 4 (2) The program logic accommodates same century and multicentury
5 formulas and date values; and
- 6 (3) The year 2000 or any other leap year is correctly treated as a leap year
7 within all program logic.

8 **SECTION 4.** A new section to chapter 44-04 of the North Dakota Century Code is
9 created and enacted as follows:

10 **Year 2000 information requests - Use - Exceptions.**

- 11 1. Any public entity may gather year 2000 processing information from any person
12 which relates to computer hardware or software, telecommunications networks, or
13 devices containing a computer processor. An information request under this
14 section may specify the person to gather responses to the request. Any year 2000
15 processing response made to an information gathering request from a public entity
16 is not a public record under section 44-04-18 or section 6 of article XI of the
17 Constitution of North Dakota and the response may not be directly or indirectly
18 used, offered in evidence, or be subject to discovery in any civil action for
19 damages in tort, contract, or for any other form of relief against the public entity or
20 person.
- 21 2. This section does not preclude the public entity from using its requests for year
22 2000 information or responses to year 2000 information requests as evidence of a
23 good-faith effort to determine year 2000 compliance of its computer hardware or
24 software, telecommunications networks, or devices containing a computer
25 processor.
- 26 3. In this section, year 2000 processing includes the calculating, comparing,
27 sequencing, displaying, or storing; transmitting; or receiving data from, into, and
28 between the twentieth and twenty-first centuries, and during the years 1999 and
29 2000, and any leap year.
- 30 4. This section does not preclude any party from separately obtaining the information
31 submitted in response to a year 2000 information request made under this section

- 1 through other independent legal authority and using the separately obtained
2 information in any action.
- 3 5. This section does not apply to any information disclosed to the public with the
4 express written consent of the party responding to a year 2000 information request
5 under this section or disclosed by that party separately from a response to a year
6 2000 information request under this section.
- 7 6. This section applies to all responses to any year 2000 information requests
8 received by a public entity whether the response was received before or after the
9 effective date of this Act.