

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2303

Introduced by

Senators Klein, D. Mathern

Representative Berg

1 A BILL for an Act relating to the liability of financial institutions and credit unions for
2 malfunctions or failures of computer or other electronic systems as the result of a year 2000
3 disruption; and to provide an expiration date.

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

5 **SECTION 1. Definitions.** As used in this Act:

6 1. "Comparative responsibility" means any act or omission that is negligent or willful,
7 assumption of risk, breach of warranty, misuse of a product, or failure to use
8 reasonable care to avoid or mitigate damage.

9 2. "Economic damages" means actual monetary losses proximately caused by a year
10 2000 disruption. The term does not include projected losses of future income or
11 earnings and lost future business or employment opportunities.

12 3. "Year 2000 disruption" means a malfunction or failure of a computer or other
13 electronic information or a malfunction or failure of an operating system or of
14 equipment, including an electrical or telecommunications malfunction or failure,
15 which prevents the system or equipment from correctly reading or processing data
16 fields containing time or date information, functioning consistently regarding that
17 time or date information, or from correctly calculating, comparing, or sequencing
18 time or date information.

19 4. "Year 2000 readiness plan" means the process by which a federally insured
20 financial institution or credit union prepares the computers and other electronic
21 information and operating systems and equipment under the financial institution's
22 or credit union's control to correctly read and process time and date information
23 and to function consistently regarding that time and date information.

1 **SECTION 2. Year 2000 readiness plan.** Notwithstanding any other provision of law,
2 this Act governs every claim for relief in which damages are sought from a federally insured
3 financial institution or credit union for an alleged year 2000 disruption if the financial institution
4 or credit union has made a good-faith effort to make and implement a year 2000 readiness
5 plan. A financial institution or credit union that has substantially complied with the requirements
6 of the financial institution's or credit union's primary federal regulator to address potential year
7 2000 disruptions is conclusively presumed to have made a good-faith effort to make and
8 implement a year 2000 readiness plan.

9 **SECTION 3. Time for commencing action.** A claim for relief in connection with a
10 year 2000 disruption must be commenced before January 1, 2001. Any claim that is not timely
11 brought is barred.

12 **SECTION 4. Requirement for privity of contract.** A federally insured financial
13 institution or credit union may not be held liable to any person not in privity of contract with the
14 financial institution or credit union for damages or other relief relating to a year 2000 disruption.

15 **SECTION 5. Liability for actual damages.** The liability of a federally insured financial
16 institution or credit union that experiences a year 2000 disruption is limited to actual economic
17 damages.

18 **SECTION 6. Comparative responsibility.** A contributory act or omission does not bar
19 recovery in an action under this Act, unless the contributory act or omission was as great as the
20 combined responsibility of every other person whose act or omission contributed to the
21 economic damages. Any damages allowed, however, must be diminished in proportion to the
22 amount of a contributing act or omission that is attributable to the person making the recovery.
23 The court may, and if requested by any party, shall direct the jury to find separate special
24 verdicts determining the amount of economic damages and the percentage of responsibility
25 attributable to each contributing person, regardless of whether the contributing person is a party
26 to the action. In the case of contribution, the court shall reduce the amount of damages in
27 proportion to the amount of responsibility to the person recovering. If two or more parties
28 contributed, the liability of each party is several only and is not joint, and each party is liable
29 only for the amount of damages attributable to the percentage of responsibility of that particular
30 party.

1 **SECTION 7. Elimination of damages other than economic damages.** A party
2 claiming relief from a federally insured financial institution or credit union as a primary
3 consequence of a year 2000 problem may not be awarded punitive damages, consequential
4 damages, extraordinary damages, noneconomic damages, or any other relief in excess of
5 economic damages.

6 **SECTION 8. EXPIRATION DATE.** This Act is effective through July 31, 2003, and
7 after that date is ineffective.