

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2303
(Senators Klein, D. Mathern)
(Representative Berg)

AN ACT relating to the liability of financial institutions and credit unions for malfunctions or failures of computer or other electronic systems as the result of a year 2000 disruption; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Comparative responsibility" means any act or omission that is negligent or willful, assumption of risk, breach of warranty, misuse of a product, or failure to use reasonable care to avoid or mitigate damage.
2. "Economic damages" means actual monetary losses proximately caused by a year 2000 disruption. The term does not include projected losses of future income or earnings and lost future business or employment opportunities.
3. "Year 2000 disruption" means a malfunction or failure of a computer or other electronic information or a malfunction or failure of an operating system or of equipment, including an electrical or telecommunications malfunction or failure, which prevents the system or equipment from correctly reading or processing data fields containing time or date information, functioning consistently regarding that time or date information, or from correctly calculating, comparing, or sequencing time or date information.
4. "Year 2000 readiness plan" means the process by which a federally insured financial institution or credit union prepares the computers and other electronic information and operating systems and equipment under the financial institution's or credit union's control to correctly read and process time and date information and to function consistently regarding that time and date information.

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

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

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

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

SECTION 6. Comparative responsibility. A contributory act or omission does not bar recovery in an action under this Act, unless the contributory act or omission was as great as the

combined responsibility of every other person whose act or omission contributed to the economic damages. Any damages allowed, however, must be diminished in proportion to the amount of a contributing act or omission that is attributable to the person making the recovery. The court may, and if requested by any party, shall direct the jury to find separate special verdicts determining the amount of economic damages and the percentage of responsibility attributable to each contributing person, regardless of whether the contributing person is a party to the action. In the case of contribution, the court shall reduce the amount of damages in proportion to the amount of responsibility to the person recovering. If two or more parties contributed, the liability of each party is several only and is not joint, and each party is liable only for the amount of damages attributable to the percentage of responsibility of that particular party.

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2303.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 95 Nays 2 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State