

**SENATE BILL NO. 2265
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2265

Introduced by

Senators Trenbeath, Espegard, Grindberg

Representatives Delmore, Klemin, Kretschmar

1 A BILL for an Act to amend and reenact sections 32-12.1-02, 32-12.1-03, and 32-12.2-02 of the
2 North Dakota Century Code, relating to civil liability of political subdivisions and the state; and
3 to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Section 32-12.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-12.1-02. Definitions.** As used in this chapter, unless the context otherwise
8 requires:

- 9 1. "Claim" means any claim permitted by this chapter brought against a political
10 subdivision for an injury caused by a political subdivision or an employee of the
11 political subdivision acting within the scope of the employee's employment or
12 office.
- 13 2. "Commissioner" means the insurance commissioner.
- 14 3. "Employee" means any officer, employee, board member, volunteer, or servant of
15 a political subdivision, whether elected or appointed and whether or not
16 compensated. The term does not include an independent contractor, or any
17 person performing tasks the details of which the political subdivision has no right to
18 control.
- 19 4. "Injury" means personal injury, death, or property damage. ~~Personal injury~~
20 ~~includes sickness or disease sustained by any person caused by a political~~
21 ~~subdivision or an employee thereof. Property damage includes injury to or~~
22 ~~destruction of tangible property caused by a political subdivision or an employee~~
23 ~~thereof.~~

- 1 5. "Personal injury" includes bodily injury, mental injury, sickness, or disease
2 sustained by a person, and injury to a person's rights or reputation.
- 3 6. "Political subdivision":
- 4 a. Includes all counties, townships, park districts, school districts, cities, public
5 nonprofit corporations, and any other units of local government which are
6 created either by statute or by the Constitution of North Dakota for local
7 government or other public purposes, except no new units of government or
8 political subdivisions are created or authorized by this chapter.
- 9 b. Does not include nor may it be construed to mean either the state of North
10 Dakota or any of the several agencies, boards, bureaus, commissions,
11 councils, courts, departments, institutions, or offices of government which
12 collectively constitute the government of the state of North Dakota.
- 13 ~~6.~~ 7. "Property damage" includes injury to or destruction of tangible or intangible
14 property.
- 15 8. "Public nonprofit corporation" means a nonprofit corporation that performs a
16 governmental function and is funded, entirely or partly, by the state, a city, county,
17 park district, school district, or township.

18 **SECTION 2. AMENDMENT.** Section 32-12.1-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **32-12.1-03. Liability of political subdivisions - Limitations.**

- 21 1. Each political subdivision is liable for money damages for injuries when the injuries
22 are proximately caused by the negligence or wrongful act or omission of any
23 employee acting within the scope of the employee's employment or office under
24 circumstances where the employee would be personally liable to a claimant in
25 accordance with the laws of this state, or injury caused from some condition or use
26 of tangible property, real or personal, under circumstances where the political
27 subdivision, if a private person, would be liable to the claimant. The enactment of
28 a law, rule, regulation, or ordinance to protect any person's health, safety, property,
29 or welfare does not create a duty of care on the part of the political subdivision, its
30 employees, or its agents, if that duty would not otherwise exist.

- 1 2. The liability of political subdivisions under this chapter is limited to a total of two
2 hundred fifty thousand dollars per person and five hundred thousand dollars for
3 injury to three or more persons during any single occurrence regardless of the
4 number of political subdivisions, or employees of such political subdivisions, which
5 are involved in that occurrence. A political subdivision may not be held liable, or
6 be ordered to indemnify an employee held liable, for punitive or exemplary
7 damages.
- 8 3. ~~A political subdivision is not liable for any claim based upon an act or omission of a~~
9 ~~political subdivision employee exercising due care in the execution of a valid or~~
10 ~~invalid statute or regulation or based upon the exercise or performance, exercising~~
11 ~~due care, or the failure to exercise or perform a discretionary function or duty on~~
12 ~~the part of a political subdivision or its employees, whether or not the discretion~~
13 ~~involved is abused. Specifically, a political subdivision or a political subdivision~~
14 ~~employee is not liable for any claim that results from~~ or a political subdivision
15 employee may not be held liable under this chapter for any of the following claims:
- 16 a. A claim based upon an act or omission of a political subdivision employee
17 exercising due care in the execution of a valid or invalid statute or regulation.
- 18 b. The decision to undertake or the refusal to undertake any legislative or
19 quasi-legislative act, including the decision to adopt or the refusal to adopt
20 any statute, charter, ordinance, order, regulation, resolution, or resolve.
- 21 ~~b-~~ c. The decision to undertake or the refusal to undertake any judicial or
22 quasi-judicial act, including the decision to grant, to grant with conditions, to
23 refuse to grant, or to revoke any license, permit, order, or other administrative
24 approval or denial.
- 25 ~~e-~~ d. The decision to perform or the refusal to exercise or perform a discretionary
26 function or duty, whether or not such discretion is abused and whether or not
27 the statute, charter, ordinance, order, resolution, regulation, or resolve under
28 which the discretionary function or duty is performed is valid or invalid.
- 29 ~~e.~~ ~~The failure to provide or maintain sufficient personnel, equipment, or other fire~~
30 ~~protection facilities; or doing any fire extinguishment or fire prevention work,~~
31 ~~rescue, resuscitation, or first aid; or any other official acts within the scope of~~

- 1 ~~official duties; provided, however, this subdivision does not provide immunity~~
2 ~~for damages resulting from acts of gross negligence.~~
- 3 e. Injury directly or indirectly caused by a person who is not employed by the
4 political subdivision.
- 5 f. A claim relating to injury directly or indirectly caused by the performance or
6 nonperformance of a public duty, including:
- 7 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing
8 to so act regarding compliance with or the violation of any law, rule,
9 regulation, or any condition affecting health or safety.
- 10 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
11 sentencing, parole, probation, or juvenile supervision.
- 12 (3) Providing or failing to provide law enforcement services in the ordinary
13 course of a political subdivision's law enforcement operations.
- 14 (4) Providing or failing to provide fire protection services in the ordinary
15 course of a political subdivision's fire protection operations.
- 16 g. "Public duty" does not include action of the political subdivision or a political
17 subdivision employee under circumstances in which a special relationship can
18 be established between the political subdivision and the injured party. A
19 special relationship is demonstrated if all of the following elements exist:
- 20 (1) Direct contact between the political subdivision and the injured party.
21 (2) An assumption by the political subdivision, by means of promises or
22 actions, of an affirmative duty to act on behalf of the party who
23 allegedly was injured.
- 24 (3) Knowledge on the part of the political subdivision that inaction of the
25 political subdivision could lead to harm.
- 26 (4) The injured party's justifiable reliance on the political subdivision's
27 affirmative undertaking, occurrence of the injury while the injured party
28 was under the direct control of the political subdivision, or the political
29 subdivision action increases the risk of harm.
- 30 ~~e. The failure of any computer hardware or software, telecommunications~~
31 ~~network, or device containing a computer processor to interpret, produce,~~

1 ~~calculate, generate, or account for a date that is compatible with the year~~
2 ~~2000 date change if the political subdivision has made a good faith effort to~~
3 ~~make the computer hardware or software, telecommunications network, or~~
4 ~~device containing a computer processor compliant with the year 2000 date~~
5 ~~change. For the purposes of this subdivision, a political subdivision is~~
6 ~~presumed to have made a good faith effort to make the computer hardware or~~
7 ~~software, telecommunications network, or device containing a computer~~
8 ~~processor compliant with the year 2000 date change if the results of testing~~
9 ~~establish that the computer hardware or software, telecommunications~~
10 ~~network, or device containing a computer processor meets the compliance~~
11 ~~requirements of this section, or if the political subdivision has sought and~~
12 ~~received an assurance of compliance from the manufacturer or supplier, or if~~
13 ~~the political subdivision has sought an assurance of compliance from the~~
14 ~~manufacturer, supplier, government or other reliable source when testing or~~
15 ~~receiving an assurance from the manufacturer or supplier of the computer~~
16 ~~hardware or software, telecommunications network, or device containing a~~
17 ~~computer processor is not practicable. For purposes of this section, computer~~
18 ~~hardware or software, a telecommunications network, or device containing a~~
19 ~~computer processor is compliant with the year 2000 date change if:~~

- 20 ~~(1) All stored dates or programs contain century recognition, including~~
21 ~~dates stored in data bases and hardware or internal system dates in~~
22 ~~devices;~~
23 ~~(2) The program logic accommodates same century and multicentury~~
24 ~~formulas and date values; and~~
25 ~~(3) The year 2000 or any other leap year is correctly treated as a leap year~~
26 ~~within all program logic.~~

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

- 30 4. This chapter does not obligate political subdivisions for an amount that is more
31 than the limitations upon liability imposed by this chapter. Subject to this chapter,

1 any payments to persons constitute payment in full of any compromised claim or
2 judgment or any final judgment under this chapter.

3 5. Notwithstanding this chapter, a political subdivision or its insurance carrier is not
4 liable for any claim arising out of the conduct of a ridesharing arrangement, as
5 defined in section 8-02-07.

6 6. A political subdivision is not liable for any claim based on an act or omission in the
7 designation, repair, operation, or maintenance of a minimum maintenance road if
8 that designation has been made in accordance with sections 24-07-35 through
9 24-07-37 and if the road has been maintained at a level to serve occasional and
10 intermittent traffic.

11 **SECTION 3. AMENDMENT.** Section 32-12.2-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **32-12.2-02. Liability of the state - Limitations - Statute of limitations.**

14 1. The state may only be held liable for money damages for an injury proximately
15 caused by the negligence or wrongful act or omission of a state employee acting
16 within the employee's scope of employment under circumstances in which the
17 employee would be personally liable to a claimant in accordance with the laws of
18 this state, or an injury caused from some condition or use of tangible property
19 under circumstances in which the state, if a private person, would be liable to the
20 claimant. No claim may be brought against the state or a state employee acting
21 within the employee's scope of employment except a claim authorized under this
22 chapter or otherwise authorized by the legislative assembly. The enactment of a
23 law, rule, or regulation to protect any person's health, safety, property, or welfare
24 does not create a duty of care on the part of the state, its employees, or its agents,
25 if that duty would not otherwise exist.

26 2. The liability of the state under this chapter is limited to a total of two hundred fifty
27 thousand dollars per person and one million dollars for any number of claims
28 arising from any single occurrence. The state may not be held liable, or be
29 ordered to indemnify a state employee held liable, for punitive or exemplary
30 damages. Any amount of a judgment against the state in excess of the one million
31 dollar limit imposed under this subsection may be paid only if the legislative

1 assembly adopts an appropriation authorizing payment of all or a portion of that
2 amount. A claimant may present proof of the judgment to the director of the office
3 of management and budget who shall include within the proposed budget for the
4 office of management and budget a request for payment for the portion of the
5 judgment in excess of the limit under this section at the next regular session of the
6 legislative assembly after the judgment is rendered.

- 7 3. Neither the state nor a state employee may be held liable under this chapter for
8 any of the following claims:
- 9 a. A claim based upon an act or omission of a state employee exercising due
10 care in the execution of a valid or invalid statute or rule.
 - 11 b. A claim based upon a decision to exercise or perform or a failure to exercise
12 or perform a discretionary function or duty on the part of the state or its
13 employees, regardless of whether the discretion involved is abused or
14 whether the statute, order, rule, or resolution under which the discretionary
15 function or duty is performed is valid or invalid. Discretionary acts include
16 acts, errors, or omissions in the design of any public project but do not include
17 the drafting of plans and specifications that are provided to a contractor to
18 construct a public project.
 - 19 c. A claim resulting from the decision to undertake or the refusal to undertake
20 any legislative or quasi-legislative act, including the decision to adopt or the
21 refusal to adopt any statute, order, rule, or resolution.
 - 22 d. A claim resulting from a decision to undertake or a refusal to undertake any
23 judicial or quasi-judicial act, including a decision to grant, to grant with
24 conditions, to refuse to grant, or to revoke any license, permit, order, or other
25 administrative approval or denial.
 - 26 e. A claim relating to injury directly or indirectly caused by a person who is not
27 employed by the state.
 - 28 f. A claim relating to injury directly or indirectly caused by the performance or
29 nonperformance of a public duty, including:

- 1 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing
2 to so act regarding compliance with or the violation of any law, rule,
3 regulation, or any condition affecting health or safety.
- 4 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
5 sentencing, parole, probation, or juvenile supervision.
- 6 (3) Providing or failing to provide law enforcement services in the ordinary
7 course of a state's law enforcement operations.
- 8 g. "Public duty" does not include action of the state or a state employee under
9 circumstances in which a special relationship can be established between the
10 state and the injured party. A special relationship is demonstrated if all of the
11 following elements exist:
- 12 (1) Direct contact between the state and the injured party.
- 13 (2) An assumption by the state, by means of promises or actions, of an
14 affirmative duty to act on behalf of the party who allegedly was injured.
- 15 (3) Knowledge on the part of the state that inaction of the state could lead
16 to harm.
- 17 (4) The injured party's justifiable reliance on the state's affirmative
18 undertaking, occurrence of the injury while the injured party was under
19 the direct control of the state, or the state action increases the risk of
20 harm.
- 21 h. A claim resulting from the assessment and collection of taxes.
- 22 f. i. A claim resulting from snow or ice conditions, water, or debris on a highway
23 or on a public sidewalk that does not abut a state-owned building or parking
24 lot, except when the condition is affirmatively caused by the negligent act of a
25 state employee.
- 26 g. j. A claim resulting from any injury caused by a wild animal in its natural state.
- 27 h. k. A claim resulting from the condition of unimproved real property owned or
28 leased by the state.
- 29 i. l. A claim resulting from the loss of benefits or compensation due under a
30 program of public assistance.

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

1 ~~assurance of compliance from the manufacturer or supplier, or if the state has~~
2 ~~sought an assurance of compliance from the manufacturer, supplier,~~
3 ~~government or other reliable source when testing or receiving an assurance~~
4 ~~from the manufacturer or supplier of the computer hardware or software,~~
5 ~~telecommunications network, or device containing a computer processor is~~
6 ~~not practicable. For purposes of this section, computer hardware or software,~~
7 ~~a telecommunications network, or device containing a computer processor is~~
8 ~~compliant with the year 2000 date change if:~~

- 9 ~~(1) All stored dates or programs contain century recognition, including~~
10 ~~dates stored in data bases and hardware or internal system dates in~~
11 ~~devices;~~
12 ~~(2) The program logic accommodates same century and multicentury~~
13 ~~formulas and date values; and~~
14 ~~(3) The year 2000 or any other leap year is correctly treated as a leap year~~
15 ~~within all program logic.~~

- 16 4. An action brought under this chapter must be commenced within the period
17 provided in section 28-01-22.1.
18 5. This chapter does not create or allow any claim that does not exist at common law
19 or has not otherwise been created by law as of April 22, 1995.

20 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.