

**1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1037**

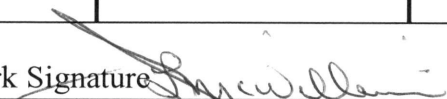
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1037

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-14-1999

| Tape Number   | Side A | Side B | Meter #    |
|---|--------|--------|------------|
| 1   |        | B      | 3.7 - 58.0 |
| 2   | X      |        | 0.1 - 31.3 |
| Committee Clerk Signature  |        |        |            |

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on January 14, 1999.

Summary of the Bill: Relating to the liability of the state for contract claim resulting from the failure of computers or computer equipment. Also relating to the liability of political subdivisions and the state for claim resulting from the failure of computers or computer equipment as a result of the year 2000 date change.

Testimony in Favor:

Jay Buringrud, Legislative Council appeared before the committee to explain the bill. This is a Y2K problem and is dealt in the 3 sections. 1. state and contract liability, 2. political subs., 3. state tort liability. If they have made a good faith effort to make the computer compliant to Y2K.

They have to make every effort that their computers are compliant, and the good faith effort can be a problem, it's a common term.

Representative Klein, How many states have done similar things up to now?

Buringrud, Four.

Representative Klemin, Why is section 1 necessary in light of section 3?

Buringrud, The attorney general considered this and it's their opinion.

Senator Robinson, Appeared before the committee and added that you can find out what the interim committee did in the Legislative Report on page 232. We thought we, as a state should be proactive. We must be positioned and prepared if this takes place.

Senator St. Aubyn, Appeared before the committee and just stated that he is comfortable with the good faith effort part of this bill. We need protection against this problem, particularly with political subs.

Jo Zschomler, OMB appeared before the committee and submitted a written testimony and amendments which she read in its entirety (**please refer to her testimony**). She prefers amendment B.

Representative Klemin, In regard to the federal law, it states that the state law is inimicable. Is prohibited the same as inimicable?

Zschomler, It's not identical as the federal.

Representative Kliniske, Has Mr. Buringrud seen the amendment?

Zschomler, No.

Jim Heck, ISD submitted a written testimony which he read in its entirety (**please refer to his testimony**). 3.4 to 9.0

Mark Johnson, ND Association of Counties submitted a written testimony which he read in it's entirety (**please refer to his testimony**). He supported the OMB amendments B option.

Connie Sprynczynatyk, League of Cities submitted a written testimony which she read in it's entry ( **pleas refer to her testimony**). She supports OMB amendments B option.

Testimony in Opposition:

Dale Moench, Appeared before the committee with written testimony which he read (**please refer to his testimony**). His concern is sovereign immunity. I don't oppose the bill, but it needs an amendment.

JoAnn Tosh, Attorney Generals Office stated she disagrees that it is a sovereign immunity issue, it is not true at all. We are trying to make good faith efforts, but there are so many things in society that we can't check or find. What were trying to do is protect ourselves.

Representative Klemin, Have you looked at the amendments and what is the constitutionality of the bill with those amendments.

Tosh, Yes. It's up to the legislature to decide which option of the amendments you would want and we are certainly willing to work with you on that. They are constitutional

Bill Sorenson, Bismarck Mayor supports the bill, but showed up late and his testifying out of sequence.

Representative Klein, Closed the hearing on HB 1057 37

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1037

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 1-28-1999

| Tape Number                                  | Side A | Side B | Meter #     |
|--|--------|--------|-------------|
| 3  | X      |        | 17.9 - 39.0 |
|  |        |        |             |
|  |        |        |             |
| Committee Clerk Signature <i>J. Williams</i> |        |        |             |

Minutes: Representative Klein instructed the committee to move on to HB 1037. We asked Representative Klemin to go over this and include ND businesses and not just ND governmental agencies on the liability part of it, if they made a good faith effort.

Representative Klemin, Submitted the amendments to the committee and proceeded to walk the committee through the amendments as they relate to the bill, citing examples. **Please refer to the tape for this discussion, meter # 20.1 - 33.0.** First of all this bill only applies to the state or political subdivisions. Would you rather have a law that can hold up in the Supreme Court or one that is probably going to get thrown out. In the product liability law, we have a statement in here that says unless the product was unreasonably dangerous at the time that it was originally made, it's not protected. That doesn't apply to the Y2K problem, because I may have a computer that works fine, but doesn't change the date now.

Representative Hawken, Those amendments we had submitted to us A and B, are they in this?

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1037 2

Hearing Date 1-28-1999

Representative Klemin, Those are not in here.

Representative Winrich, My understanding is that this gives us plan B.

Representative Thoreson, What does this bill do for us? The state of ND.

Representative Klein, Basically limits the liability of anything that may result from chip problems, street lights etc. etc. Things that could be blamed on a Y2K problem. What were trying to do is protect the city, counties, state government, townships, schools and our private businesses from being sued.

Representative Thoreson, If you didn't have this and business made a good faith effort and it went to court, what would happen.

Representative Klein, Under this they would not be liable. If we didn't pass it the door would be open.

Committee Action:

Representative Grande, Made a motion for a Do Pass on the amendments.

Representative Thoreson, Seconded the motion.

Motion Passes: Yes (vocal).

Representative Grande, Made a motion for a Do Pass on the amended bill.

Representative Winrich, Seconded the motion.

Motion Passes: Do Pass as amended **14-0-1**.

Representative Klemin, Is the carrier for the bill.

Roll Call Vote #: 1 Date: 1-28-99

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1037

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AMENDED

Motion Made By GRANDE Seconded By WINRICH

| Representatives     | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| CHAIRMAN KLEIN      | ✓   |    | REP. WINRICH    | ✓   |    |
| VICE-CHAIR KLINISKE | ✓   |    |                 |     |    |
| REP. BREKKE         |     |    |                 |     |    |
| REP. CLEARY         | ✓   |    |                 |     |    |
| REP. DEVLIN         | ✓   |    |                 |     |    |
| REP. FAIRFIELD      | ✓   |    |                 |     |    |
| REP. GORDER         | ✓   |    |                 |     |    |
| REP. GRANDE         | ✓   |    |                 |     |    |
| REP. HAAS           | ✓   |    |                 |     |    |
| REP. HAWKEN         | ✓   |    |                 |     |    |
| REP. KLEMIN         | ✓   |    |                 |     |    |
| REP. KROEBER        | ✓   |    |                 |     |    |
| REP. METCALF        | ✓   |    |                 |     |    |
| REP. THORESON       | ✓   |    |                 |     |    |

Total (Yes) 14 No 0

Absent 1

Floor Assignment KLEMIN

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1037: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1037 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new section to chapter 28-01.3 and"

Page 1, line 3, after "equipment" insert "and to the liability of a manufacturer for a year 2000 claim" and after "reenact" insert "sections 28-01.3-04, 28-01.3-06,"

Page 1, line 4, after "32-12.1-03" insert a comma

Page 1, line 6, after "change" insert "and to the liability of a nonmanufacturing seller for a year 2000 claim and the determination of a defective product"

Page 1, after line 7, insert:

**"SECTION 1.** A new section to chapter 28-01.3 of the North Dakota Century Code is created and enacted as follows:

**Claims resulting from year 2000 date change computer failures prohibited.** Except to the extent liability is expressly assumed under warranty or contract, a manufacturer is not liable for a claim that is the result of the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the manufacturer has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this section, a manufacturer is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if all the following conditions are met:

1. The data structures provide four-digit date recognition;
2. Any stored data contains date century recognition, including data stored in data bases and hardware or device internal system dates;
3. The calculations and program logic accommodate same century and multcentury formulas and data values;
4. The interfaces prevent noncompliant dates and data from entering or exiting any system operated or used by an initial user or consumer;
5. The user interfaces accurately show four-digit years when critical to business functions; and
6. The year 2000 or any other leap year is correctly treated as a leap year within all calculation and calendar logic.

**SECTION 2. AMENDMENT.** Section 28-01.3-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**28-01.3-04. Liability of nonmanufacturing sellers.**



1. In any products liability action or an action involving a year 2000 claim maintained against a seller of a product who did not manufacture the product, the seller shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.
2. After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:
  - a. That the certifying seller exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.
  - b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.
  - c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.
3. In an action involving a year 2000 claim, a certifying seller who is not dismissed is entitled to the same presumption of a good-faith effort as a manufacturer.
- ~~3.~~ 4. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying seller if the plaintiff can show any of the following:
  - a. That the applicable statute of limitation bars a product liability action against the manufacturer of the product allegedly causing the injury, death, or damage.
  - b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.
5. In the event a certifying seller is reinstated in in action involving a year 2000 claim, a certifying seller is entitled to the same presumption of a good-faith effort as a manufacturer and subject to the same conditions as a manufacturer.

**SECTION 3. AMENDMENT.** Section 28-01.3-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**28-01.3-06. Determination of defective product.** No product may be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer. This section does not apply to a product involved in a year 2000 claim."

Page 1, line 16, after the underscored comma insert "the state is presumed to have made a good-faith effort to make the", after "computer" insert "hardware", and after "or" insert "software."

Page 1 , line 17, replace "equipment" with "networks,", replace "are" with "containing a computer processor", and after "if" insert "all of the following conditions are met"

Page 1, line 18, replace the first "date" with "data" and replace the second underscored period with an underscored semicolon

Page 1, line 20, replace the underscored period with an underscored semicolon

Page 1, line 22, replace the underscored period with an underscored semicolon

Page 1, line 24, replace the underscored period with an underscored semicolon

Page 2, line 2, replace the underscored period with "; and"

Page 3, line 7, after the underscored comma insert "a political subdivision is presumed to have made a good-faith effort to make the", after "computer" insert "hardware", and after "or" insert "software,"

Page 3, line 8, replace "equipment" with "networks,", replace "are" with "containing a computer processor"

Page 3, line 9, after "if" insert "all of the following conditions are met"

Page 3, line 10, replace the first "date" with "data" and replace the underscored period with an underscored semicolon

Page 3, line 12, replace the underscored period with an underscored semicolon

Page 3, line 14, replace the underscored period with an underscored semicolon

Page 3, line 16, replace the underscored period with an underscored semicolon

Page 3, line 18, replace the underscored period with "; and"

Page 5, line 17, after the underscored comma insert "the state is presumed to have made a good-faith effort to make the", after "computer" insert "hardware", and after "or" insert "software,"

Page 5, line 18, replace "equipment" with "networks," and replace "are" with "containing a computer processor"

Page 5, line 19, after "if" insert "all of the following conditions are met"

Page 5, line 20, replace the first "date" with "data" and replace the underscored period with an underscored semicolon

Page 5, line 22, replace the underscored period with an underscored semicolon

Page 5, line 24, replace the underscored period with an underscored semicolon

Page 5, line 26, replace the underscored period with an underscored semicolon

Page 5, line 28, replace the underscored period with "; and"

Re-number accordingly

**1999 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1037.**


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1037

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 18, 1999

| Tape Number  | Side A | Side B | Meter #  |
|--|--------|--------|----------|
| 1  |        | X      | 1930-END |
| 2  | X      |        | 0-4260   |
| Committee Clerk Signature  |        |        |          |

Minutes: CHAIRMAN KREBSBACH called the committee to order and opened the hearing on HB 1037 which relates to liability of the state for a contract claim resulting from the failure of computers or computer equipment and to the liability of the manufacturer for a year 2000 claim. Appearing before the committee to review the legislation was JAY BURINGRUD of the Legislative Council. He indicated that his testimony was only going to cover the bill as it was recommended by the interim committee. To give a little background why this bill was recommended by the information technology committee is that committee is charged with looking at technology to see its impact on state government and the uses of technology by government. As the committee was conducting its review of technology and reviewing state agency information technology plans, the issue came up as to what these state agencies are doing for Y2K. Y2K is a problem that refers to the difficulty that certain computer processors, namely DOS in recognizing the year 2000. Everybody has heard the talk of programming and the early

years of programming rather than put in the four digits for the date used the last two digits of the year. This was fine and nobody cared about the year 2000 back in 1950, 60, and 70 because they probably weren't going to be around then to worry about it. The concern is what happens when the magic January 2000 comes around and the program in the computer says 00. Is the computer going to know its 2000 or is it 1900 or what. What happens? That's the concern. The basic content of Mr. Buringrud's testimony is found on Tape 1, Side B, Meter #'s 1930-3355.

Questions were offered by SENATORS KREBSBACH, DEMERS, and STENEHJEM. JO ZSCHOMLER, Director of the RISK MANAGEMENT DIVISION of OMB appeared before the committee. A copy of her written testimony is attached. Questions were offered by SENATORS DEMERS and STENEHJEM. SENATOR DEMERS inquired about gross negligence. SENATOR KREBSBACH inquired about the language on page 15, lines 19-31. SENATOR STENEHJEM inquired about who would explain the language concerning who has not acted with gross negligence? JIM HECK with the Information Services Division appeared before the committee. A copy of his written testimony is attached. SENATOR KREBSBACH offered comments. SENATOR THANE also added some comments. MARK JOHNSON, Executive Director of the North Dakota Association of Counties appeared before the committee. A written copy of his testimony is attached. A question was offered by SENATOR KREBSBACH. CONNIE SPRYNCZYNATYK appeared as executive director of the North Dakota League of Cities. A copy of her written testimony is attached. A question concerning amendments was offered by SENATOR DEMERS. STEVE SPILDE, chief executive officer of the North Dakota Insurance Reserve Fund appeared before the committee. A written copy of his testimony is attached. Questions were offered by SENATORS DEMERS and STENEHJEM.

BRUCE LEVI of the North Dakota Medical Association appeared before the committee. We were not involved in the deliberations on this bill on the house side. I know that the amendment did come in from an individual legislator on that committee and I looked at the legislative history this morning just to see what happened and it was not really a lot of discussion about that particular amendment. Our concern I think what we are looking at particularly at this time, in your review of sections 1, 2, and 3 as they relate to manufacturers and product liability and the Y2K issue particularly as it applies to the health care community, that you review the impact on the medical community. Particularly the definition of a seller in this sequence of commerce in terms of the physician or a hospital or other health care provider who is actually involved as an end user of a product manufactured by somebody else. I think our concern is that the definitions in the bill may or may not apply to someone in the position like a physician or a hospital. In the case of a Y2K claim arising from the malfunction of a medical device or a medical information system or piece of medical equipment or an elevator or something like that. I guess we just wanted to alert the committee to that and hope that you consider the ramifications to the health care community. He gave the committee a statement that came from a lawyer for the board of trustees of the American Medical Association. A copy of that is attached. ARNOLD THOMAS appeared before the committee. He indicated that the Health Care Association with the GNDA worked together on this legislation rather than coming in as a lone entity. JACK MCDONALD of the North Dakota Trial Lawyers Association addressed the committee with his concerns. His testimony covers Meter #'s 2790-3310 of Tape 2, Side A. There were no questions from committee members. JOANN TOTH an attorney for RMF appeared before the committee to answer questions for the committee concerning legal issues and the amendments. There was no

further testimony on the bill at this time. SENATOR KREBSBACH closed the hearing on HB 1037.

**COMMITTEE DISCUSSION, Tape 2, Side A, Meter #'s 5900-END and Tape 2, Side B, Meter #'s 0-1292. CHAIRMAN KREBSBACH indicated to the committee that the committee would discuss HB 1037. There were questions which a number of the committee members needed answered. At this time JIM HECK of ISD appeared before the committee to respond to questions. SENATOR KILZER, the title of the bill indicates claims resulting from the year 2000 date change computer failure. Actually the date change is midnight of December 31, nine and one-half months from now. I'm wondering about if there is also going to be an auxiliary problem a year from that date because the millennium doesn't really end until the end of the year 2000. And then the new millennium starts and I guess I kind of think of my check blanks. The last one is number 100 and the next one starts with 101. Is there going to be any kind of a problem a year from the date we are talking about here? MR. HECK, I think the year 2000 is the reference to the time where we expect most of the date sensitive software or embedded chips to possibly fail. It's the way the year has been encoded. In reality we've been experiencing year 2000 changes two years ago already when we were looking at drivers license registration. I suspect that afterwards we are going to experience some problems. We did at least in our case look at a number base. I think there are about six or seven dates that are taken into account when we do the testing. One is leap year. It is an unusual leap year. For year 2000, and we test for that and we test for some other, April 9, 1999 coming up is one. If you were a programmer in my era 9999 was the end of file, nothing could ever be higher than that. No key in a file could be**

higher than all 9's so when you got to that that was how I knew it was the end of the file.

There are a number of combinations, a number of dates and we've been experiencing the year 2000 changes for some time and I suspect we will afterwards too. SENATOR

KILZER, and these other things that you've mentioned are not covered or referred to in this even though we don't state these specific dates that we are focusing on. MR. HECK, I can't speak to the way the bill is written. That came out of the interim committee and was written by Jay Buringrud of Legislative Council and I'm not an attorney as to determine if the wording covers all of that. I can only speak from a technical side as to how it works and of why we are in the trouble we are and what we are doing to correct it. I would direct that question to Jay or somebody like that. CHAIRMAN KREBSBACH, One question

that came up today and I think that JoAnn from the Attorney General's office answered it quite well, however I think you can fill us in a little bit more on the affiliated committees and other groups that could be involved. MR. HECK, In my testimony I had indicated that we were coordinating the activities of the state agencies but we were not of boards, commissions, etc. in the handout I gave you. Boards and commissions are both commodity boards and licensing boards and commissions. They are a bunch of occupational boards and commissions. We incorporated most of those as part of the technology planning process in HB 1034 last session. In the inventory of those boards and commissions almost all of them either have nothing or a single PC where they keep their member list and some accounting of their funding and other office abilities to do correspondence and things. So we didn't even pursue the paperwork to have them report a whole year 2000 questionnaire.

We can follow up on some of those but they almost to the board and commission consist of



a single PC and that's about it. Almost all of those boards and commissions are tight on money and a lot of them have PC's that are old and certainly are going to fail.

CHAIRMAN KREBSBACH indicated then, I have one further question. With all of your agencies that have reported you have the three that are not submitting a status report, Independent Studies, School for the Deaf, and Water Commission. Is there reason why they are not submitting, or what is the reason they are not submitting? MR. HECK, we have followed up a letter. I have spoken personally at least with Dale Frank from the Water Commission but up until now we have not received a report. Now that is not to say that they are not probably doing something. The water commission is a very conscientious agency. But we don't have anything in the form of a report to verify where they are at in the 2000 effort. The other two we haven't followed up on closely. SENATOR STENEHJEM, Jim this section that was amended in the house to add the sellers and the manufacturers of computers. I know you weren't privy to that, but is that something that is being screamed for that you are hearing about? I'm kind of wondering where it came from. MR. HECK, it's not something I hear, but on that committee is Representative Klemin and I think that is an interest of his, at least the way I gathered in our presentation he talked about that. Maybe he has a constituency that is asking for them to be included. SENATOR STENEHJEM, you haven't heard of that happening in North Dakota? MR. HECK, No. SENATOR STENEHJEM, How about do you know if other states are putting in that kind of broad exemption for these folks. MR. HECK, I am not aware of any of the details of any legislation in other states, I'm just aware that these states have passed something but what is in the details, I don't know. SENATOR DEMERS, I'm curious if

this is the total of the states that have passed bills. It doesn't give you a lot of faith when they list North Dakota as William Janklow. SENATOR STENEHJEM, indicated that he could outline his preliminary opinion on what we could do with it. We should look seriously at adopting the amendments that Jo Zschomler brought in, taking off all the house amendments. Although I have a concern about that gross negligence section, I want to see how that fits in when they bring in the statutes. I don't know that we need, that's an impossible burden to meet and if we're going to adopt it we might as well give them blanket immunity. SENATOR DEMERS, I don't like the gross negligence part of it either. I just think it goes too far. I can see giving them protection from things they really couldn't foresee and good faith and stuff. Discussion continued with comments being offered by SENATORS STENEHJEM, THANE, KILZER, DEMERS, and WARDNER. The discussion ended at this time with the committee taking no action on the bill at this time.

*March 25, 1999, Committee Discussion, Tape 1, Side A, Steve Spilde presented amendments to the committee members. He indicated that one set of amendments includes Gross Negligence Standards language and the other does not. That is really the only difference in the two sets of amendments. Both sets of amendments would remove from the engrossed bill the language that was added in the house that deals with manufacturers, non-manufacturing sellers, and product liability. SENATOR W. STENEHJEM, I'm just looking for the gross negligence language in the material that was given to us. CHAIRMAN KREBSBACH and MR. SPILDE the engrossed version page 2 and page 7. A discussion took place with SENATORS W. STENEHJEM, DEMERS, KREBSBACH, and WARDNER presenting questions. Responses were from MR. SPILDE. JO ZSCHOMLER and JOANN TOLT also*

*offered responses. (3/25/99, Tape 1, Side A, Meter #'s 4060-END and Side B, 0-1982)*

*SENATOR STENEHJEM made a motion to adopt the amendments without the Gross Negligence Standard, seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 3 Yeas, 4 Nays. The motion failed. SENATOR WARDNER moved to adopt the amendments which contain the Gross Negligence Standard. Seconded by SENATOR THANE. Committee discussion took place involving SENATORS KREBSBACH, W. STENEHJEM, DEMERS, and WARDNER. Responses were offered by JOANN TOLT and MR. SPILDE. Following discussion SENATOR WARDNER withdrew his motion. At this time SENATOR WARDNER made a motion to amend using the amendments without the Gross Negligence Standard. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. A motion for DO PASS AS AMENDED was made by SENATOR STENEHJEM, seconded by SENATOR WARDNER. ROLL CALL VOTE indicated 7 Yeas, 0 Nays, 0 Absent or Not Voting. SENATOR W. STENEHJEM will carry the bill.*

Date: 3/25/99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1037

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amend without Gross Negligence

Motion Made By Sen. Stenehjem Seconded By Sen. DeMers

| Senators             | Yes | No | Senators | Yes | No |
|----------------------|-----|----|----------|-----|----|
| SENATOR KREBSBACH    |     | ✓  |          |     |    |
| SENATOR WARDNER      |     | ✓  |          |     |    |
| SENATOR KILZER       |     | ✓  |          |     |    |
| SENATOR STENEHJEM    | ✓   |    |          |     |    |
| SENATOR THANE        |     | ✓  |          |     |    |
| SENATOR DEMERS       | ✓   |    |          |     |    |
| SENATOR MUTZENBERGER | ✓   |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |

Total (Yes) 3 No 4  
Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

March 25, 1999

JCS  
3/27/99  
1083

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037  
SENATE AMENDMENTS TO ENGR. HB 1037 GVA 3/27/99

Page 1, line 1, remove "chapter 28-01.3 and a new section to"

Page 1, line 2, after "32-12" insert "and a new section to chapter 44-04"

Page 1, line 3, replace "the liability" with "year 2000 information requests"

Page 1, line 4, remove "of a manufacturer for a year 2000 claim" and remove "sections 28-01.3-04,"

Page 1, line 5, remove "28-01.3-06," and remove the second comma

Page 1, line 8, replace "and to the liability of a nonmanufacturing seller for a year 2000 claim and the" with a period

Page 1, remove line 9

Page 1, remove lines 11 through 24

SENATE AMENDMENTS TO ENGR. HB 1037 GVA 3/27/99

Page 2, remove lines 1 through 30

SENATE AMENDMENTS TO ENGR. HB 1037 GVA 3/27/99

Page 3, remove lines 1 through 20

SENATE AMENDMENTS TO ENGR. HB 1037 GVA 3/27/99

Page 4, line 2, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:"

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

SENATE AMENDMENTS TO ENGR. HB 1037 GVA 3/27/99

Page 4, remove lines 3 through 13

SENATE AMENDMENTS TO ENGR. HB 1037 GVA 3/27/99

Page 5, line 19, replace "all of the following" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software,"

2053

telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 5, remove lines 20 through 31

SENATE AMENDMENTS TO ENGR. HB 1037

GVA

3/27/99

Page 8, line 1, replace "all of the following" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 8, replace lines 2 through 13 with:

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

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

- 1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. (Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
- 2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
- 3. (In this section,) year 2000 processing includes the calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into,

\* MERES  
FED

and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.

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

Renumber accordingly

Date: 3/25/99  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1037

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amend without Gross Negliegence

Motion Made By Sen Wardner Seconded By Sen. Stenehjem

| Senators             | Yes | No | Senators | Yes | No |
|----------------------|-----|----|----------|-----|----|
| SENATOR KREBSBACH    | ✓   |    |          |     |    |
| SENATOR WARDNER      | ✓   |    |          |     |    |
| SENATOR KILZER       | ✓   |    |          |     |    |
| SENATOR STENEHJEM    | ✓   |    |          |     |    |
| SENATOR THANE        | ✓   |    |          |     |    |
| SENATOR DEMERS       | ✓   |    |          |     |    |
| SENATOR MUTZENBERGER | ✓   |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:



Date: 3/25/99  
Roll Call Vote #: 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1037

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Sen. Stenehjem Seconded By Sen. Wardner

| Senators             | Yes | No | Senators | Yes | No |
|----------------------|-----|----|----------|-----|----|
| SENATOR KREBSBACH    | ✓   |    |          |     |    |
| SENATOR WARDNER      | ✓   |    |          |     |    |
| SENATOR KILZER       | ✓   |    |          |     |    |
| SENATOR STENEHJEM    | ✓   |    |          |     |    |
| SENATOR THANE        | ✓   |    |          |     |    |
| SENATOR DEMERS       | ✓   |    |          |     |    |
| SENATOR MUTZENBERGER | ✓   |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |
|                      |     |    |          |     |    |

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Stenehjem

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1037, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1037 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "chapter 28-01.3 and a new section to"

Page 1, line 2, after "32-12" insert "and a new section to chapter 44-04"

Page 1, line 3, replace "the liability" with "year 2000 information requests"

Page 1, line 4, remove "of a manufacturer for a year 2000 claim" and remove "sections 28-01.3-04,"

Page 1, line 5, remove "28-01.3-06," and remove the second comma

Page 1, line 8, replace "and to the liability of a nonmanufacturing seller for a year 2000 claim and the" with a period

Page 1, remove line 9

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 20

Page 4, line 2, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 4, remove lines 3 through 13

Page 5, line 19, replace "all of the following" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

- (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
- (2) The program logic accommodates same century and multicentury formulas and date values; and

- (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic."

Page 5, remove lines 20 through 31

Page 8, line 1, replace "all of the following" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 8, replace lines 2 through 13 with:

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

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

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

5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act."

Renumber accordingly

**1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1037**

**CONFERENCE COMMITTEE**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1037

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 4-6-1999

| Tape Number                                      | Side A | Side B | Meter #  |
|--|--------|--------|----------|
| 2  | X      |        | 0 - 28.8 |
|  |        |        |          |
|  |        |        |          |
| Committee Clerk Signature <i>James McWilliam</i> |        |        |          |

Minutes: The Conference Committee consists of on the House side Representative Klein (Chairman), Representative Klemin and Representative Metcalf. The Senate members include Senator W. Stenehjem (Chairman), Senator Wardner and Senator DeMers.

Summary of the Bill: Relating to the liability of the state for a contract claim resulting from the failure of computers or computer equipment and to the liability of a manufacturer for a year 2000 claim. Also, relating to the liability of political subdivisions and the state for a claim resulting from the failure of computers or computer equipment as a result of the year 2000 date change and to the liability of a nonmanufacturing seller for a year 2000 claim and the determination of a defective product.

Representative Klein, Chairman of the subcommittee called the committee to order. We had made some major changes and forwarded it to the Senate. The Senate made some additional major changes and now where trying resolve our differences.

Representative Klemin, I would like to move that the Senate recede from its amendments to the bill and that the House amendments be adopted.

Chairman Klein, These amendments would fit with the engrossed house bill.

Representative Klemin, Essentially what this results in is that we would be back with the engrossed house bill. The provisions relating to business would be put back into the bill. Section 1 of the amendments I handed out is section 4 of the Senate amendments, with one exception and that is in subsection 1 of section 1. This last sentence (provision) is not included in the proposed amendments I handed out. All the rest of section 4 on the year 2000 information requests is included.

Chairman Klein, So basically that last sentence in subsection 1, starting with "*any year 2000*" is deleted? This is under the year 2000 information requests heading?

Representative Klemin, Correct. In section 4, subsection 1, we have not included the last sentence of subsection 1. Other than the new section 1 that we are proposing it is identical to the section 4 in the Senate amendments.

Senator Stenehjem, All of section 1 is the same that we have adopted with the exception that you have eliminated that one sentence.

Representative Klemin, Yes.

Senator DeMers, I am wondering why you eliminated that sentence, but I'm sure you'll get around to that.

Representative Klemin, Two reasons, first of all I am not entirely certain why it was put in there in the first place. We don't think that kind of thing should be not subject to review by somebody.

In other words, nobody can find out about this kind of a thing and there are already some

protections in federal law relating to admissibility of evidence which would cover things to the extent appropriate. We have a federal law that was adopted by Congress (*The Year 2000 Information and Readiness Disclosure Act*). This federal law provides standards under which year 2000 statements are not admissible. That has nothing to do with discover-ability (discoverable) which is where the senate amendment goes beyond what is reasonable under the federal statute.

Senator Stenehjem, We have a problem with taking this out because the statute is designed to North Dakotas version of the federal act. It encourages not just government agencies to share this information, but private businesses to share with the government what they are doing to be in compliance with the year 2000 problem. We have to grant them assurance that this information will not become public information. That's why we put it in there.

Representative Klemin, Wouldn't that be a way to shelter any information from being discoverable if there was a claim against a private company?

Senator Stenehjem, I don't think there is anything that could prevent a person from discover from the discover process. The one place that they should not get it from is the agency they voluntarily gave it to. They would have to go back to the company to get it, but not from the government agency.

Representative Klemin, If there was an action against some person other than a public entity. That person had provided the information to a public entity in response to an information request and the plaintiff in that action made a request for documents to that entity (private company).

What your saying is that you can still do that?

Senator Stenehjem, Yes.



Representative Klemin, What if we delete the words "*or person*" at the end. That's were its confusing.

Senator Stenehjem, I still think subsection 4 should calm that.

Representative Klemin, Certainly there is a question here on the discovery part.

Senator Wardner, Wouldn't there be some cases where a person in government could be held liable?

Senator Stenehjem, Well there's not, but there could be a private action against a private individual such as Representative Klemin is talking about. In that case, I still think the government entity ought not to be required to give information that a private business voluntarily gave in an effort to help the state solve the problem.

Senator DeMers, Putting it another way, why on earth would a private business want to give a response or request for any kind of information if they thought that information was going to become public.

Senator Stenehjem, They wouldn't.

Senator DeMers, That would defeat the whole purpose unless we protect them.

Chairman Klein, I think now that I look at it in terms of section 4 which we concentrated on in section 1, I think that elevates at least the concern I have. I am not sure how you feel about it Representative Klemin?

Representative Klemin, As long as there is a record as clear as what the intent is, a court could look back at the legislative history including the minutes to indicate that this not conclude someone from subpoenaing a non public entities records just because they provided information to a public entity.

Senator Stenehjem, I agree. The courts will only look at legislative history if the wording in the statute isn't clear. I think that subsection 4 is clear but if it isn't clear enough then the court would come back and listen to what was said right now. It certainly is not our intent to preclude individuals from gaining information other than what was voluntarily given to the government.

Chairman Klein, Maybe we could put that back in as it was.

Representative Klemin, With that understanding I guess I could go along with leaving section 4 which is our new section 1 exactly the same as it is in the Senate version. Which would put that last sentence in.

Senator Stenehjem, Maybe I could just cut to the quick here and ask what the problem the House has with the bill? For the reason that we worked with the Office of Risk Management, Association of Counties, League of Cities, ND Insurance Reserve Fund and the Attorney Generals Office to come up with these amendments and are quite comfortable with them.

Representative Klemin, I guess our concern is that we think that if business does all these same things that the government is doing, then business should be equally protected in order to encourage the good faith efforts by business as well. I guess I could turn that question around and ask why doesn't the Senate feel that business doesn't need the same protection as government?

Senator Stenehjem, This bill came through the interim Information Technology Committee and it was a bill designed from day one to protect government entities from liability. Not anybody from the private industry came into our hearings and asked to be included in this. I also reviewed the House Committee minutes and noted that nobody from private business came in asking to be relieved of liability. The bankers who wanted a separate immunity provision came in and got

their own bill. I think the manufacturers and suppliers should have done this and none of them contacted anybody on our committee and didn't appear at our hearing asking for immunity.

Representative Klemin, I think we have more of a job here in the legislature to do things that we see are right, regardless of whether a particular entity comes in and asks for it or not. As far as manufacturer is concerned, that term in the products liability statute is a little more expansive than you might think. It's a defined term which means a person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or a consumer includes any seller of a product who is own for a significant part by a manufacturer who owns a whole or significant part of the manufacturer (*this last statement read by Representative Klemin was hard to interpret off the tape and there is a possibility I was unable to transcribe it accurately*). There are a lot of small businesses in North Dakota that are engaged in the process of designing, assembling, fabricating, producing or otherwise preparing a product that could be covered in a Y2K situation. Where not talking about Microsoft or somebody like that, there are all kinds of companies that assemble computer components. These small businesses maybe don't have a big collective voice like the bankers do to come in and talk about these things and I think if they have made a good faith effort to comply with these requirements in the process of doing those things (were talking about ND businesses primarily here) then I think they ought to be covered here regardless of whether they had the foresight to come in and asked to be included in this bill if they even knew about it.

Chairman Klein, Was there any concern over there or somebody asking that they be taken out (private businesses) or is it just something where nobody asked to be included?

Senator Stenehjem, It was a little bit of each. I wasn't all that excited about granting immunity to anybody until the counties, state and cities came in and outlined for us. We quizzed them at great lengths (what are you doing? and what steps are you taking?) and we got answers that satisfied me. After the answers we received, I was satisfied with giving them the liability. I can't tell you what the manufacturers and suppliers have done, because none of them came to answer any questions. I imagine their efforts run the gambit from manufacture to manufacture and this exemption that you have adopted does cover a host of North Dakota businesses, but it also would apply to Microsoft and all those other out of state companies that in the final analysis created the problem and I don't know if I want to let them all off the hook.

Representative Metcalf, If they meet the 3 criteria (Senate items) then why not allow them to be included. I agree that the small business man out there does not have lawyers on his staff to look after all of this. I think it's are responsibility to look after them to some degree.

Senator Wardner, When you start talking about small businesses it does bother me a little bit. We have been talking about Y2K for a couple of years. The bankers came in and they had their own bill where as the small businesses didn't step forward and maybe didn't feel it was a problem. One of the things that really put us on guard is that we had the medical association come in and then they wanted to get on this bill also. If we do this, then maybe we have to go back and amend in the medical people.

Representative Klemin, They have protections already under our existing product liability law.

Chairman Klein, You noticed we had 6 items of criteria that we dropped and adopted your 3 probably because they were more descriptive and less troublesome or whatever term you want to use.

Representative Klemin, All the rest of these proposed amendments merely substitute these 3 criteria from the Senate amendments for the 6 that were in the House.

Jo Zschomler, Office of Risk Management appeared before the committee and submitted a written testimony (**please refer to her testimony**). A number of the manufacturers are not responding to our request of information. There's no way we can make sure those pieces of equipment are in compliance. We're asking that you give us the good faith based on assurances sought, assurances received or testing. There is a definite difference between the proposed House version the Senate version.

Representative Klemin, Page 4, line 2 my opinion of that is that it makes it entirely, or basically the public entity would have to be doing very little to make a good faith effort. Beyond this they (public entity) wouldn't have to do the rest of these things and I think that goes much too far towards the immunity side for doing very little or next to nothing to get it. Also, if there's a concern about some thing you purchased from some other party, I think the state is covered in a couple of ways 1). Product liability statute. 2). The state certainly has the ability to obtain protections with respect to those manufacturers either under contract law or by contract provisions for allocating liability or under the general warranty provisions which should also cover it. So I think there are at least three other methods by which your concern is addressed outside of the statute and putting this into it means you have to do next to nothing other than demand assurances from somebody else and then you're immune. To me that's going too far.

Senator Stenehjem, It is a broad description and I would agree with that. This is the compromise we reached and in my own point of view I was only willing to go along with it after I was

convinced by the different agencies on this terrific effort they are making to come into compliance.

Jo Zschomler, Were doing the testing based on the three step process. If we cannot show the court that we've done that, then we have not shown them that we are entitled to the good faith presumption. Y2K is going to bring a lot of law suits and we would like an opportunity to be able to have a act/motion dismissed based on a showing of good faith on our part. If we don't have this kind of definition were concerned that the court is going to say that this is a fact issue and we are going to have to go to a jury. This will result in a lot of costs involved not only to the state and political subdivision, but also to the party bringing this suit only to find out that there was good faith.

Chairman Klein, Can we arrive at some sort of language that will address this problem?

Senator Stenehjem, Perhaps we can work on the assurances aspect.

Representative Klemin, The state itself has an extremely through testing procedure that they are going through and I didn't here that from the other political subdivision.

Chairman Klein, Will Senator Stenehjem and Representative Klemin work on this and we will meet on this matter later.

Chairman Klein, Adjourned the meeting.

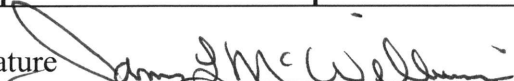
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1037

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 4-8-1999

| Tape Number  | Side A | Side B | Meter #  |
|--|--------|--------|----------|
| 1  | X      |        | 0 - 30.0 |
|  |        |        |          |
|  |        |        |          |
| Committee Clerk Signature  |        |        |          |

Minutes: The Conference Committee consists of on the House side Representative Klein (Chairman), Representative Klemin and Representative Metcalf. The Senate members include Senator W. Stenehjem (Chairman), Senator Wardner and Senator DeMers. This is the second meeting of the Conference Committee.

Chairman Klein, Called the committee to order. All members are present. We are still trying to resolve the wording and I'll ask Representative Klemin to proceed with what he put together were we wanted to address the area of information requests under section 1.

Representative Klemin, I have just been given an additional proposed change (Office of Risk Management) to that amendment that I proposed and am just getting to that now. I wasn't aware till this very minute that the federal law on this year 2000 information request. It's very similar to what the state has on the public records. There is a federal provision that goes beyond that data gathering issue. Which is similar to what had previously been in the Senate amendment about

copying the public records and not being subject to disclosure. The federal statute contains some provisions as to how that is to be done and apparently the way I read this it is not automatic.

Chairman Klein, Your referring to your amendments dated April 7th under section 1, subsection 1 the last sentence that you had added?

Representative Klemin, Yes I am. What I am saying in view of the fact that there is a federal provision, I don't know that I have a problem with just the federal one in this particular respect only applies to federal. I don't know if I really have a problem with having a similar provision that applies to state, similar to what the federal one is.

Chairman Klein, Were now looking at the same thing in the Senate amendments subsection 1 of section 4.

Joanne Toth, Assistant Attorney General who represents the State Risk Management appeared before the committee to try and clarify some issues. What were talking about is the Federal Year 2000 Information Readiness Disclosure Act. Section 4 deals with special data gathering and like Representative Klemin said that talks about year 2000 information requests are made to the federal government, whether or not the federal government can disclose those requests. Not only is that information exempt from the Freedom of Information Act, it also can't be disclosed to any third party and it can't be used by any entity directly or indirectly in any civil action. I have tried to take this and insert it into the First Engrossment of the Senate Amendments. If you go to section 4 of that bill, we've tried to make that section almost identical to this. There may be slight wording differences because that is the way it is between federal and state (basically the same thing).



Chairman Klein, So the wording that exists on the yellow sheet (Senate Proposed Amendments) on section 4, subsection 1 is what mirrors federal?

Toth, Yes.

Senator Stenehjem, It's a federal request for information. We have to have a state counterpart for state requests for information.

Representative Klemin, I would feel more comfortable if it mirrors what's in here because it goes beyond that.

Toth, What we tried to do is use language from our open records act. In North Dakota we distinguish between a civil action and an administrative proceeding, we use two different words.

Chairman Klein, Is everybody in agreement that we go back to the original section 4 in the Senate amendments.

Representative Klemin, I think that would be all right. The other part that applies to the bill in various places is the handout (amendment #2) that Joanne gave us.

Toth, What we've done is taken Representative Klemin's memorandum dated April 7th and on page 2 where it talks about page 4, line 2. That's where we are talking about state contracts. I am talking about page 2 of the Klemin amendments where it talks about page 4, line 2. What that is basically saying is that the states immune has good faith immunity according to the Klemin amendment if we do testing or if we not only seek but receive assurances of compliance from only manufacturers. Our problem with that language was basically two fold. We have no problem with the testing part, we agree with that. Where the received and sought assurances that's where it becomes problematic. We want to be able to go to the manufacture and receive and seek assurances. But no matter what we do in some instances we are not going to be able to

find the specific manufacturer. If we want to rely on the Fed's, the Klemin proposal doesn't allow us to do that. So what we've done is first we try and do testing whenever possible (my amendments) when that doesn't work we will write the manufacturer not only seeking assurances, but will try and receive something back from the manufacturer giving us assurances. If that doesn't work, give us the third alternative to try and seek assurances from someone else and that's what this does (This is amendment #1-amendments to the First Engrossment with Senate Amendments of Engrossed House Bill No. 1037).

Chairman Klein, If we adopted amendment #2 would we need this one?

Toth, Probably not. You could do one or the other.

Senator Stenehjem, I think we should go with the Senate version, but I like the wording of the Klemin language or whatever you want to call it better. I think it's a little tighter than the other.

Senator DeMers, If we adopt either sets of these language, what does that do to the state doing this one time rather than each of the various units of the state doing it several times. Can it apply to the higher education system as well?

Toth, Either one of these two amendments you wouldn't have to duplicate. Without these two amendments, the bill of the House or Senate would not allow us to do that. That's why these amendments are so important.

Representative Klemin, I don't have a problem with revising the amendments that I prepared to make them consistent with the ones that Ms. Toth prepared.

Representative Klemin, Made a two part motion. One is on the Klemin amendments dated April 7th on section 1, subsection 1 amend that and add back in the language that the Senate amended

(original Senate language). Then to substitute the states proposed language to four other places within the Klemin amendments where this language is addressed.

Senator Stenehjem, Just one problem here, where kind of skirting all around the issue. In the final analysis we have this manufacturer-supplier problem. The underlying basis of the Klemin amendments is that the manufacturers-suppliers would be immune under similar provision. I am not going to vote for that no matter what. We might as well get that resolved, because if we can take them out it doesn't matter whether we use the Klemin vehicle or Senate vehicle. We need to resolve that because the position of the Senate is that were not going to allow it.

Representative Klemin, The handout I gave you earlier contains the definition of what a manufacturer is. It includes a lot of businesses in North Dakota that assemble and work with computer components (hardware-software). Were not just talking about big companies someplace. If a manufacturer (as defined in the Products Liability Law) has done all of the things that a public entity can do to obtain the good faith test, then why shouldn't they be entitled to the same presumptions.

Senator Stenehjem, Were not just talking about North Dakota businesses either. Then why aren't you including everybody? Blanket immunity for everybody.

Representative Klemin, If they have done all of these things, maybe everybody should be included. It's a presumption.

Chairman Klein, Shouldn't we treat all of the entities the same way.

Senator Stenehjem, This bill came through the interim committee and was always intended as a governmental immunity. That's the way the hearings were in the Interim, House and Senate. No manufacturing supplier came in and asked for it and I don't believe they should have it.

Representative Klemin, Just because they didn't ask for it.

Senator Stenehjem, In part because they didn't ask for it and also because it wasn't part of a public hearing anywhere.

Representative Klemin, In the House they may have not come in and testified, but we did discuss it. The discussion in the committee did address the issue. Anybody that can meet all of those requirements should be entitled to that presumption of good faith.

Senator DeMers, I am not going to vote for this either.

Senator Stenehjem, Did you get the e-mail from Mr. Gorke?

Representative Klemin, Yes this morning, but he hasn't seen any of the material that we have here today.

Senator Wardner, I was on the interim committee and Mr. Gorke did talk to us. Our concern in the interim was state and local government. I think that businesses should have been at the forefront if they think they needed it. They shouldn't be in it.

Senator DeMers, They should have submitted their own bill.

Chairman Klein, Many of these small businesses didn't have a group to represent them and I guess we feel they need to be included.

Senator Stenehjem, Were getting very broad even with these amendments. Giving immunity to anybody is not something I do lightly. The only reason I feel comfortable in giving this kind of liability is that in addition to drafting this statute, we as policy makers are directing political subdivision and state government what they have to do to be compliant. We don't have the right to tell manufacturers what to do. I have no idea as to what their doing and I imagine it runs the

gambit from nothing to a great deal. Until I am convinced that they are entitled to this type of broad immunity, I am not going to vote in favor of including them. They didn't even ask for it.

Chairman Klein, What are the alternatives? Do we put the bill down?

Senator Stenehjem, We could do that, we don't have to have it. Some in the Senate feel we didn't need it in the first place. Just get compliant.

Representative Klemin, That certainly is an alternative. The state has been making some pretty good progress.

Senator Stenehjem, I think we should pass the bill, but I think we should pass it with the limited intention that it had from day one.

Representative Metcalf, Seconded the motion to adopt the amendments that include the manufacturers and suppliers. I would like to see the manufacturers left in, but if it means killing the bill, I really feel we do not want to subject our government entities to additional liabilities.

Motion Fails: 3-3.

Representative Klein, Where do we go from here?

Senator Stenehjem, Maybe we would have to do two sets of amendments.

Representative Klemin, I think we agree on everything in the Klemin amendments plus what we talked about this morning except what's at the bottom of page 1 and top of page 2.

Senator Stenehjem, I'd like to have just one vehicle. Probably going to have to ask Joanne Toth to do it.

Toth, Go back to the First Engrossment of Senate because they have subsection 4 that you all agree on. We would include the alternative language involving political subdivision and immunity for the state. Then have separate amendments for the manufacturers.

Page 8

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1037 Conference Committee 2

Hearing Date 4-8-1999

Senator Stenejem, I want the vehicle in front of us in one form without several different sets.

And then we will have to resolve the manufacturers and sellers or kill the bill.

Chairman Klein, Looks like were at an impasse on the manufacturers thing.

Senator Wardner, Have a set of amendments that fit with the House and then we've got them here and which ever way were going to go, it's done.

Chairman Klein, Adjourned the meeting.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1037

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 4-9-1999

| Tape Number                                  | Side A | Side B | Meter #  |
|--|--------|--------|----------|
| 1  | X      |        | 0 - 42.0 |
|  |        |        |          |
|  |        |        |          |
| Committee Clerk Signature <i>J. McWeller</i> |        |        |          |

Minutes: The Conference Committee consists of on the House side Representative Klein (Chairman), Representative Klemin and Representative Metcalf. The Senate members include Senator W. Stenehjem (Chairman), Senator Wardner and Senator DeMers. This is the third meeting of the Conference Committee.

Chairman Klein, Called the committee to order. All members are present. Go to page 2 of Proposed Amendments to Engrossed House Bill No. 1037 revised by Representative Klemin dated 4-8-99, 5:45 PM. He did a little further amending on this, would Representative Klemin walk us through that.

Representative Klemin, We need to bear in mind that the only reason anything like this is going to come up is because a citizen or business in ND has been harmed by some failure of a Y2K problem and that harm as resulted in damages or injury to that business or citizen. If that citizen or business has a legitimate claim, they should be entitled to make that claim. On the other hand

we need to encourage the state and political subdivisions to take the appropriate steps necessary to ensure that we don't have that harm or injury and also to give the state some protection likewise if they take those steps. I started with the amendments that were prepared by Joanne Toth (Assistant Attorney General-representing Risk Management). I also got a memo from Mr. Lesmeister and he points out something that I think is really relevant. If were going to make the standard of good faith so lacks that perhaps a letter from any salesman that walks off the street is going to be enough for a good faith effort, then I don't think were doing our job. So what the further amendment has done is to really limit the good faith effort to two situations. 1). testing has been done and the result of the testing has shown the compliance standards have been met. 2). There has been an assurances of compliance from the government or other reliable source that it does met this requirement. For the state, that government would be the federal government and for the political subdivision it would be the state or federal government. I have eliminated out of the amendment the assurance of compliance from a manufacturer or supplier based on the kind of problem Mr. Lesmeister shows up in his memo. In other respects the business parts is eliminated. Senator Stenehjem, What if the agency has done everything that it could possibly think of to get an assurance and can't get an assurance. That will not be good faith under yours because they have to obtain it.

Representative Klemin, Not exactly, it would not be a statutory presumption. I think it's important to bear in mind that we are talking about a statutory presumption here. This would not eliminate other kinds of things that would normally take place in a negligence case.

Senator Stenehjem, But only way down the line. You want to head them off at the path so you don't have to go through all of that legal expenses.



Representative Klemin, What you just said would be a question of fact anyway. Whether they have done everything that is reasonably possible or not. Not the way the Supreme Court views summary judgment.

Senator Stenehjem, If we adopt your amendments the definition of good faith would have to be established at the trial.

Senator DeMers, What is "best practice" defined as?

Representative Klemin, That term is used in a lot of different situations.

Senator Stenehjem, That's not a legal term.

Senator DeMers, Were making the assumption in the proposed change of amendments that it has to be an actual documented statement in hand.

Joanne Toth, It's not a legal term that you can just flip through the century code and have that definition come out. What the state has done and I will speak only on behalf of the state is that for Y2K compliance's OMB has a web page that sets forth the criteria that needs to be done for Y2K compliance's. It's not intended to encompass only testing and there are reasons for that. Political subdivisions for example, there are no tests that can be done on an embedded system(s), so we have to move on to the next step of seeking and receiving assurances. This would also be a "best practice". When ever possible we write to the manufacturer/supplier and have them write back and say we don't need to test your system because we have tested it ourselves and trust us it's Y2K compliant. That's an assurance from them that it's compliant and that's another "best practice".

Representative Klemin, I don't think you have really answered the question of what the definition of "best practice" is. You've made an argument as to why the language shouldn't be changed.

Joanne Toth, "Best practice" is testing, seeking assurances and receiving assurances.

Representative Klemin, The way it would read with the amendment now is that 1). you've got testing 2). you've got assurance from the federal government or other reliable source. The other reliable source you haven't defined. It certainly isn't going to be any salesman or supplier that walks in off the street and hands you a letter, which is the way it could be read by how it's written.

Joanne Toth, I don't see where you have a problem with receiving assurances. Now what your doing is taking out the remedy for seeking an assurance and were only trying to use that as a last ditch effort.

Senator Stenehjem, We don't know if there will be dozens or hundreds of possible claims.

Joanne Toth, The most serious consequences we face are those imbedded systems where there may not be a manufacturer (still in existence).

Representative Klemin, I don't think that in those kind of cases that an injured citizen(s) of the state should be the one's that bear the sole harm on his shoulders just because the state or political subdivision has problems in determining it. Why should we put all the damage on the shoulders of the citizen. It's not fair just because the state can't isolate all of these particular things, that an individual who is harmed, we say that's to bad. They should have their day in court.

Joanne Toth, All this bill is saying is that if the state proves it's entitled to immunity, then maybe the manufacturer could be responsible (have claims brought against them).

Senator Stenehjem, What we are seeking to define here is the extent of the states duty. If the state does that, then I don't know why the tax payers have to be responsible for all the unforeseen injuries and that's what this bill seeks to limit. I don't feel that I will feel bad as a lawmaker telling the citizens that we in North Dakota have a statute that sets forth what is good faith, what is required of our state government and if they do those things, I don't think we are at fault. Sometimes things happen (people get injured) and it's nobodies fault.

Representative Klemin, Were only talking about foreseeable harm to start with and secondly were talking about product liability. We do have existing remedies under general law already that's well established, we also have a product liability law that provides protections. How far do we have to go to protect the state from legitimate claims of it's citizens.

Senator Stenehjem, There is a foreseeability of problems with these imbedded chips. We cannot know how to fix it and that's the problem.

Representative Klemin, Were talking here about a presumption of good faith.

Senator Stenehjem, Were talking about a temporary immunity position. This will go away. This amendment is a responsible action on the part of the state legislature and also makes a requirement for the political subdivisions to act responsibly and if they don't they are going to have to pay and if they are, then we don't.

Representative Metcalf, What about the imbedded chips that nobody knew were there, and therefore there was no request for assurance made from anybody. Nobody tested it and nobody sought any assurance for it, but the chip was still there. How does that fit into it?

Joanne Toth, Where trying to write to the manufacturer (snowplow example and sewer system example). We are trying to seek those assurances.

Representative Metcalf, I appreciate that, but you have the authority and know how to do that.

What about the little town in North Dakota that doesn't have the resources available to them such as the ones available to you.

Joanne Toth, What this bill is trying to do is not make them liable. We are coordinating with the cities and the subdivisions and telling them that there is a government web page, OMB web page and there are seminars also. Did I answer your question?

Representative Metcalf, No. What if there is still something that was absolutely overlooked.

Joanne Toth, If it was absolutely overlooked and we don't seek anything. Then we don't have a good faith presumption.

Senator Stenehjem, The political subdivisions are covered under this bill but only if they do the things that are required in here.

Chairman Klein, This language has been looked at by the Trial Lawyers, League of Cities and Association of Counties?

Joanne Toth, Yes.

\*Also the representatives from each of these organizations were present in the room and all either nodded in approval or vocally said yes they had no problem with it.

Representative Klemin, I guess my main problem with it is if somebody simply gets a letter of assurance from a supplier that turns out to be invalid and we all no that's happening because of Mr. Lesmeister telling us that. I just don't see how that can be considered to be part of a good faith presumption. I think it goes too far as far as what a presumption of good faith is.

Joanne Toth, The state would not be entitled to immunity then if the testing showed there were problems and a letter showed (stated) there weren't. Seeking assurances only applies when you can't do testing and can't receive assurances. Testing will be our first course.

Senator Stenehjem, Seems to me that if the state of North Dakota writes to a manufacturer and they say were compliant and then it's not, then sue the manufacturer. As long as it's not an obvious shame letter that's been obtained.

Joanne Toth, Part of this goes back to who's in the best position to control Y2K compliance. The manufacturers and suppliers are the ones who actually designed it and inherently they should know the most about their systems.

Representative Klemin, Why do you include suppliers in this? Suppliers could be anybody (wholesaler, retailer) who's main motivation is to sale.

Joanne Toth, I think part of the reason the word supplier is included, is for example a computer company in Fargo that sells it's own internal work. Their the manufacturer and the supplier. Also a lot of the time the supplier can get in contact with the manufacturer and if we can't get in touch with the manufacturer the supplier is able to tell us. It seems reasonable to check with them.

Representative Klemin, Well, it may seem reasonable to check with them but that doesn't necessarily mean that it translates into a statutory presumption of good faith.

Joanne Toth, That's a policy decision for you to make. There are a lot of other immunities other than good faith.

Representative Klemin, We just can't make it so easy to have a presumption of good faith under the statute with very little to it. I guess my main problem is the situation where you seek an

assurance of compliance from somebody and they hand you a letter (their weighing the odds that something will not happen). We have a remedy already under product liability.

Joanne Toth, The problem with those remedies is that the state gets involved in not only being Y2K compliant but were going to spend years and years in possible litigation.

Representative Klemin, The only reason you'd be in such extensive litigation is because there is some citizen or business in the state that's been very substantially damaged and there again I think it's a matter of allocating who should bear the burden. Should it be all on the back of that individual citizen or should the state have some responsibility. I don't think you can make it all to one sided. It's very one sided now, the way the present law reads. If you make it so one sided, I think your getting into the area where it's no longer a reasonable restriction and your likely to have the whole thing thrown out by the Supreme Court because now in essence you made it so one sided that you reinstated governmental and sovereign immunity.

Joanne Toth, Let me respond by telling you the type of lawsuit's that we see. There are some good faith ones, but the vast majority of lawsuits we see are things such as chipped windshields, dented doors on cars and their argument is nothing more than, (Toth paused here) and it isn't even state road it's a county road.

Representative Klemin, What's this have to do with the subject?

Joanne Toth, The point is that Y2K could bring a hugh amount of litigation and all were trying to do is stop some of that litigation and possibly save the state and it's tax payers money.

Representative Metcalf, What is the actual definition of a "reliable source"?

Joanne Toth, We do not have a specific definition for "reliable source".

Representative Metcalf, Is a "reliable source" also the manufacturer or supplier? As an individual word is "reliable source" defined as a manufacturer and supplier?

Joanne Toth, One word answer, Yes.

Representative Metcalf, Well then why do we have to list manufacturer and supplier separately. Why can't they just be considered the "reliable source"?

Joanne Toth, That would be fine.

Representative Metcalf, Well that's all were trying to do here.

Joanne Toth, But you've taken out part of the immunity.

Representative Klemin, I guess I've stated my reasons.

Senator Stenehjem, Yes we've been around and around here. The second draft of amendments and I'm about to move them are tighter than the way it passed the Senate. Counties, Cities, State and even the Trial Lawyers Association are happy with these and their the one who's job it is to sue out these claims. I will move the proposed amendments that state at the top "exclude manufacturers and suppliers".

Senator Wardner, The Senate recedes from it's amendments and further amends. I'll second this motion.

Representative Klemin, It doesn't say testing first. If you can't do that then get assurance of compliance from the manufacturer and if you can't do that then get something from the government or other reliable source. It could be three separate alternatives which is indicated by the word "or" between all of those clauses. You have an alternative and you could go to the one that requires the least amount of effort first.

Chairman Klein, Are you saying we should have a prioritized system in order?

Representative Klemin, Yes.

Senator DeMers, The last "or" says if nothing is not practicable.

Joanne Toth, Testing or receiving, either one can be first and then seeking assurances is last.

Representative Klemin, So receiving assurance from a supplier is an alternative to testing. And only when you can't get an assurance or test is seeking assurance an option. So my problem is that all that you have to do is get a letter from a supplier and then you've met the burden that's required by this. That I think is insufficient. There's no priority or pecking order or steps that you have to go through. Nothing say's you have to test first, so you could simply get the letter from the supplier and then you've met the good faith presumption under this statute. I think that's inadequate.

Chairman Klein, Senator Stenehjem, would you have a problem if we put an order in there?

Senator Stenehjem, I might because it seems to me we could be wasting a lot of money. If we've written Microsoft and obtained a letter, why would we want them to test first. Why go through that expense.

Steve Spilde, North Dakota Insurance Reserve Fund appeared before the committee and stated that the problem is that their not really getting information from manufacturers and probably won't. It's largely a contractible problem and from a stand point of getting or seeking assurances our experience has been and we expect it to continue to be is that it's going to be very difficult to get an assurance from a manufacturer or supplier.

Representative Klemin, I am wondering if committee would have any problem with trying to put in some type of reasonable standards for this assurance that your receiving. Such as sought and



received a creditable assurance of compliance or a reasonable credible assurance of compliance. I just don't want any old letter from any old supplier to be a standard here.

Joanne Toth, What we've tried to do here is define compliance and it's a three part test, so there would have to be an assurance of compliance.

Representative Klemin, I understand that, anybody can put that in a letter.

Joanne Toth, Not anybody can put that in a letter. There going to have to be a knowledgeable person.

Representative Klemin, Exactly what I am getting at. Is there some way we can define that?

Joanne Toth, But the manufacturer is naturally the one who knows the most about the system. If we go back to a reasonable standard that would cease the whole presumption of good faith. It would defeat the whole purpose of the bill.

Representative Klemin, So any letter that we get from a supplier that says these three things is going to be included. That bothers me because Mr. Lesmeister is pointing out that they got those kind of letters. It's a low threshold of what's required here. There's got to be something credible about the letter.

Representative Metcalf, If a manufacturer or supplier sends a letter and say's their product meets these three standards and they don't then maybe the political entities should be automatically relieved from liability, but they should go after that manufacturer.

Representative Klemin, It's a very lack standard and will be very easy to establish some of these alternatives we have.

Senator Stenehjem, I agree with Representative Klemin, it is a broad immunity. If it weren't for the fact that I was convinced that the state is doing a very good job of getting ready, I wouldn't be supporting this.

Representative Metcalf, I am going to vote for it but I really believe that the standards set by Representative Klemin are the way I'd like to see it. But, I am willing to compromise .

Committee Action:

Motion Passes: Do Pass **5-1**.

Chairman Klein, Adjourned the meeting.

4-8-99

(Bill Number) HB 1037 (, as (re)engrossed):

Your Conference Committee MOTION AMENDMENT (1) FAILED

|                             |     |                                     |
|-----------------------------|-----|-------------------------------------|
| For the Senate:             | YES | NO                                  |
| <u>SENATOR W. STENEHJEM</u> |     | <input checked="" type="checkbox"/> |
| <u>SENATOR WARDNER</u>      |     | <input checked="" type="checkbox"/> |
| <u>SENATOR DEMERS</u>       |     | <input checked="" type="checkbox"/> |

|                               |                                     |    |
|-------------------------------|-------------------------------------|----|
| For the House:                | YES                                 | NO |
| <u>REPRESENTATIVE KLEIN</u>   | <input checked="" type="checkbox"/> |    |
| <u>REPRESENTATIVE KLEMIN</u>  | <input checked="" type="checkbox"/> |    |
| <u>REPRESENTATIVE METCALF</u> | <input checked="" type="checkbox"/> |    |

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724      725/726      S724/H726      S723/H725  
 the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

and place \_\_\_\_\_ on the Seventh order.  
727

, adopt (further) amendments as follows, and place  
 \_\_\_\_\_ on the Seventh order:

having been unable to agree, recommends that the committee be discharged  
 and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
 calendar.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

① ①

(Bill Number) HB 1037 (, as (re)engrossed):

DP 5-1

Your Conference Committee

For the Senate:                    YES   NO

SENATOR W. STENEHJEM ✓

SENATOR WARDNER ✓

SENATOR DEMERS ✓

For the House:                    YES   NO

REPRESENTATIVE KLEIN ✓

REPRESENTATIVE KLEMIN ✓

REPRESENTATIVE METCALF ✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)  
723/724      725/726      S724/B726      S723/B725  
 the (Senate/House) amendments on (S/J/HJ) page(s) 1068 - 1070

and place \_\_\_\_\_ on the Seventh order.  
727

, adopt (further) amendments as follows, and place  
 \_\_\_\_\_ on the Seventh order:

having been unable to agree, recommends that the committee be discharged  
 and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
 calendar.

DATE: 04/09/99

CARRIER: REP KLEIN

LC NO. \_\_\_\_\_ : \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ . \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1037, as engrossed:** Your conference committee (Sens. W. Stenehjem, Wardner, DeMers and Reps. Klein, Klemin, Metcalf) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1068-1070, adopt amendments as follows, and place HB 1037 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1068-1070 of the House Journal and pages 911-913 of the Senate Journal and that Engrossed House Bill No. 1037 be amended as follows:

Page 1, line 1, after the first "to" insert "provide for year 2000 information requests; to" and remove "a new section to chapter 28-01.3 and"

Page 1, line 3, remove "and to the liability"

Page 1, line 4, remove "of a manufacturer for a year 2000 claim" and remove "sections 28-01.3-04,"

Page 1, line 5, remove "28-01.3-06," and remove the second comma

Page 1, line 8, remove "and to the liability of a nonmanufacturing seller for a year 2000 claim and the"

Page 1, line 9, remove "determination of a defective product"

Page 1, after line 10, insert:

**"SECTION 1. Year 2000 information requests - Use - Exceptions.**

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article 11 of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
3. For purposes of this section, year 2000 processing includes calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action or proceeding.

5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act."

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 20

Page 4, line 1, replace "networks" with "network" and replace "devices" with "device"

Page 4, line 2, replace "all of the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

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

Page 4, remove lines 3 through 13

Page 5, line 18, replace "networks" with "network" and replace "devices" with "device"

Page 5, line 19, replace "all of the following" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

- (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;

- (2) The program logic accommodates same century and multicentury formulas and date values; and
- (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic."

Page 5, remove lines 20 through 31

Page 7, line 31, replace "networks" with "network" and replace "devices" with "device"

Page 8, line 1, replace "all of the following" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

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

Page 8, remove lines 2 through 13

Re-number accordingly

Engrossed HB 1037 was placed on the Seventh order of business on the calendar.

**1999 TESTIMONY**

**HB 1037**



**Testimony by Jo Zschomler**  
**Director of the Risk Management Division of OMB**  
**House Bill 1037 – Government and Veterans Affairs Committee**  
**January 14, 1999**

Mr. Chairman, members of the Government and Veterans Affairs Committee, my name is Jo Zschomler. I am the Director of the Risk Management Division of OMB. I appear today in support of House Bill 1037. However, I am requesting consideration of alternate amendments to the proposed legislation. My comments are focused on the State's and political subdivisions' liability exposures for Year 2000 claims and lawsuits.

Tort claims are one of the Year 2000 exposures State agencies may face. Tort liability claims (such as negligence, products liability, or defamation) resulting from a Year 2000 issue would be administered by the Risk Management Division, and, if compensable, paid by the Risk Management Fund.

Contract claims (such as breach of contract) are another potential Year 2000 exposure for State agencies. If a vendor, contractor or another party sues claiming the State breached a contract by failing to deal with a Year 2000 problem, agencies would be required to defend that lawsuit and could be required to pay for certain losses the contracting party suffers.

Unfortunately, no one will know the extent of the Year 2000 consequences until after they occur. One reason for this is that use of embedded chips which may be subject to Y2K problems have become common place. Embedded chips exist in computers, automobiles, elevators, HVAC systems etc. Prognosticators have gone so far as to estimate that lawsuits in the United States alone for Y2K claims will total \$1 trillion.

State agencies at the direction of the Governor and ISD are diligently working toward identifying and addressing Y2K compliance. Jim Heck, Director of the Information Services of OMB is here this morning and will explain to you in more detail the proactive processes state agencies have accomplished and have targeted to complete prior to December 31, 1999. Mark Johnson will report on the counties' efforts and Connie Sprynczynatyk on the cities' efforts.

Unfortunately, no matter how diligent the agencies' efforts are, there are potential Y2K exposures over which they have no control. Even if the agencies have secured documented verification from service providers that the providers' systems are Y2K compliant, there is a possibility that those systems could fail. Potential problems to the State could include business partners who have failures contaminating the State's systems, equipment containing non-compliant, unidentifiable embedded chips closing down systems, utility failures, etc. Any one of those failures could result in the State being named as a party to a lawsuit resulting in litigation costs.

House Bill 1037 was introduced to address the liability exposure of political subdivisions and the State for claims resulting from the failure of computers or embedded chips as a result of the year 2000 date change based on a good faith effort. I appear today to respectfully request support for amendments to the current bill draft.

**AMENDMENT "A"** - The first amendment I would like to address has been labeled with an "A" in the upper right hand corner of the material distributed to you. The amendment addresses three separate issues.

First, as you may be aware, the Federal Government passed *The Year 2000 Information and Readiness Disclosure Act* which was signed into law by President Clinton in October of 1998. That Act was designed to encourage businesses to

voluntarily share information on the extent of their year 2000 strategies, solutions and tools with their contract partners, customers and the public at large.

In order to encourage the exchange of important Y2K readiness information, the Federal Act contains a provision that any statement made at the request of a Federal entity, agency, or authority is inadmissible in any Federal or State legal action. In short, the federal legislation protects Y2K information requested by the federal government. We would like provide similar protection for information requested by the State or a political subdivision. The specific language that accomplishes this is found at Section 1 of Amendment A.

The second revision on the proposed Amendment labeled "A" changes the word "date" to "data" when the criteria for equipment or devices being determined as compliant is referenced throughout the Bill. We are assuming the word "date" was a typing error. The word "data" is the more appropriate definition of file structures, the manner in which information is stored on a computer.

Third, House Bill 1037 as drafted conditions the exclusion to liability for Y2K contract and tort claims against the State or a political subdivision on whether or not the State or political subdivision has made "a good-faith effort" to address those exposures. As we have discussed, no matter how diligent the State's or political subdivisions' efforts are, there are potential Y2K exposures over which they have no control. Furthermore, the determination of good faith is a fact issue which means there would probably be no opportunity to obtain a motion to dismiss or a summary judgment if a lawsuit was brought as the result of a Y2K failure. Such litigation would be expensive, not only for the State and the political subdivision, but also for the plaintiff who would have to finance the discovery and trial process only to receive a verdict that the State or political subdivision had in fact made a good faith effort. The Court would also expend considerable time and expense in attempting to resolve these issues.

To rectify these concerns we request that HB 1037 be amended to create a presumption of good faith. This means it automatically would be presumed that the State or political subdivision acted in good faith in certain instances. The burden would then shift to the party suing the State or political subdivision to prove the presumption does not apply. The specific language to accomplish this is found in Amendment "A" at the references to Page 1, line 16; Page 3, line 7, and Page 5, line 17.

**AMENDMENT "B"** - I would now like to direct your attention to the Amendment labeled "B" that is attached to the material I have provided to you. Amendment "B" amends the current statute governing State contract claim and the State and political subdivision tort claims acts by adding an additional exception to liability under the acts.

HB 1037 as written and our proposed Amendment "A" provide *some* protection to the State and political subdivisions for the potential financial impact for Y2K claims. However, we feel Amendment "B" provides a preferable course of action. It is more fiscally responsible for all parties involved. We must consider the costs North Dakota taxpayers are incurring to make the State and political subdivisions Year 2000 compliant. Those taxpayers should not be expected to pay twice; once for addressing a problem the State and political subdivisions did not create, and then again to defend a lawsuit should there be a failure due to an undetected problem or the failure of a provider to the state system.

Amendment "B" starts "after 'A BILL' " and provides protection from all Year 2000 claims. It is patterned after legislation from Georgia, Indiana, Nevada, South Carolina and Virginia.

By proposing this legislation we are not suggesting that state agencies or political subdivisions discontinue their present efforts to identify and address Year 2000 compliance issues. There would be no reason for them to do so. It is in their best interest to be Y2K compliant or they would not be able to perform their jobs. We are only requesting the maximum protection provided by law be afforded to them so they are not subjected to costs associated with lawsuits based on claims over which they have no control. We feel confident that a trier of fact will find that the State is acting in a prudent and reasonable manner in addressing its Y2K exposures thereby negating the probability of a favorable verdict against the State after a plaintiff has incurred litigation costs.

You will note that, since it is our recommendation that the Committee adopt Amendment B in lieu of the current draft of HB 1037 and our Amendment A , we have incorporated at Section 1 of Amendment B the provision that Y2K information provided at the request of the State or a political subdivision is inadmissible in any Federal or State legal action.

This concludes my prepared remarks.

A

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 1, after the first "to" insert "prohibit use of certain year 2000 statements in civil actions and to"

Page 1, after line 7, insert:

"SECTION 1. Use of year 2000 statements prohibited in civil actions. The state or any political subdivision may gather year 2000 processing information from any of its component agencies, boards, bureaus, institutions, divisions, or branches, and from any private person, business, organization, or entity, relating to computer hardware or software, telecommunications networks, or embedded chips or other devices containing computer processors. The responses to an information gathering request must be in the form of a year 2000 statement on year 2000 processing. Any year 2000 processing response made in any form in response to an information gathering request from the state or any political subdivision is exempt from section 44-04-18 and section 6 of article XI of the constitution of North Dakota, and such a response may not be used by any party either directly or indirectly, received in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the state, any political subdivision, or any private person, business, organization, or entity.

In this section "year 2000 processing" includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving data data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year. In this section "year 2000 statement" includes any communication, report, survey, analysis, assessment, or other conveyance of information by a state agency or political subdivision, or any of their branches, components, divisions, institutions, commissions, bureaus, or industries, in any form or medium, concerning:

1. An assessment, projection, or estimate on its year 2000 processing capabilities;
2. Plans, objectives, or timetables for implementing or verifying its year 2000 processing capabilities;
3. Test plans, test dates, test results, or operational problems or solutions relating to its year 2000 processing capabilities; or

4. Reviews, comments, or any other opinions or beliefs relating directly or indirectly to its year 2000 processing capabilities."

Page 1, line 16, after "change." insert "for the purposes of this section, a good faith effort is presumed to have been made if the state has conducted an inventory of its computer hardware or software, telecommunications network, or devices containing computer processors and made efforts to ascertain the year 2000 compliance of those inventoried items deemed critical to essential services provided by the state, either through independent testing or assurances sought or received from manufacturers or suppliers."

Page 1, line 18, replace "date" with "data"

Page 3, line 7, after "change." insert "for the purposes of this subdivision, a good faith effort is presumed to have been made if the political subdivision has conducted an inventory of its computer hardware or software, telecommunications network, or devices containing computer processors and made efforts to ascertain the year 2000 compliance of those inventoried items deemed critical to essential services provided by the political subdivision, either through independent testing or assurances sought or received from manufacturers or suppliers."

Page 3, line 10, replace "date" with "data"

Page 5, line 17, after "change." insert "for the purposes of this subdivision, a good faith effort is presumed to have been made if the state has conducted an inventory of its computer hardware or software, telecommunications network, or devices containing computer processors and made efforts to ascertain the year 2000 compliance of those inventoried items deemed critical to essential services provided by the state, either through independent testing or assurances sought or received from manufacturers or suppliers."

Page 5, line 20, replace "date" with "data"

Renumber accordingly

B

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to prohibit use of certain year 2000 statements in civil actions; to create and enact a new section to chapter 32-12 of the North Dakota Century Code, relating to immunity of the state from a contract claim resulting from the failure of computers or computer equipment; and to amend and reenact subsection 3 of section 32-12.1-03 and subsection 3 of section 32-12.2-02 of the North Dakota Century Code, relating to immunity from liability of political subdivisions and the state from claims resulting from the failure of computers or computer equipment as a result of the year 2000 date change.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Use of year 2000 statements prohibited in civil actions. The state or any political subdivision may gather year 2000 processing information from any of its component agencies, boards, bureaus, institutions, divisions, or branches, and from any private person, business, organization, or entity, relating to computer hardware or software, telecommunications networks, or embedded chips or other devices containing computer processors. The responses to an information gathering request must be in the form of a year 2000 statement on year 2000 processing. Any year 2000 processing response made in any form in response to an information gathering request from the state or any political subdivision is exempt from section 44-04-18 and section 6 of article XI of the constitution of North Dakota, and such a response may not be used by any party either directly or indirectly, received in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the state, any political subdivision, or any private person, business, organization, or entity.

In this section "year 2000 processing" includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving data data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year. In this section "year 2000 statement" includes any communication, report, survey, analysis, assessment, or other conveyance of information by a state agency or political subdivision, or any of their branches, components, divisions, institutions, commissions, bureaus, or industries, in any form or medium, concerning:

1. An assessment, projection, or estimate on its year 2000 processing capabilities;



2. Plans, objectives, or timetables for implementing or verifying its year 2000 processing capabilities;
3. Test plans, test dates, test results, or operational problems or solutions relating to its year 2000 processing capabilities; or
4. Reviews, comments, or any other opinions or beliefs relating directly or indirectly to its year 2000 processing capabilities.

**SECTION 2.** A new section to chapter 32-12 of the North Dakota Century Code is created and enacted as follows:

Claims resulting from year 2000 date change computer failures prohibited. The state is not liable for a claim arising upon contract which is the result of the failure of any computer hardware or software, telecommunications network, or embedded chip or other device containing a computer processor to recognize, interpret, produce, calculate, generate, display, or otherwise process or account for a date that is compatible with the year 2000 date change regardless of the cause of the failure.

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

3. A political subdivision is not liable for any claim based upon an act or omission of ~~an~~ a political subdivision employee ~~of a political subdivision,~~ exercising due care, in the execution of a valid or invalid statute or regulation, ~~whether or not such statute or regulation be valid,~~ or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved ~~be~~ is abused. Specifically, a political subdivision or ~~an~~ a political subdivision employee ~~thereof~~ is not liable for any claim that results from:
  - a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
  - b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.

- c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion ~~be~~ is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
- d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this ~~subsection~~ subdivision does not provide immunity for damages resulting from acts of gross negligence.
- e. The failure of any computer hardware or software, telecommunications network, or embedded chip or other device containing a computer processor to recognize, interpret, produce, calculate, generate, display, or otherwise process or account for a date that is compatible with the year 2000 date change regardless of the cause of the failure.

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

**SECTION 4. AMENDMENT.** Subsection 3 of section 32-12.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:
  - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
  - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is

valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.

- c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
- d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- e. A claim resulting from the assessment and collection of taxes.
- f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
- g. A claim resulting from any injury caused by a wild animal in its natural state.
- h. A claim resulting from the condition of unimproved real property owned or leased by the state.
- i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
- j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
- k. A claim resulting from damage to the property of a patient or inmate of a state institution.
- l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- o. A claim for damage to property owned by the state.
- p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.
- q. A claim resulting from the failure of any computer hardware or software, telecommunications network, or embedded chip or other device containing a computer processor to recognize, interpret, produce, calculate, generate, display, or otherwise process or account for a date that is compatible with the year 2000 date change regardless of the cause of the failure."

Renumber accordingly

**TESTIMONY ON HB1037**  
**To the House Government and Veterans Affairs Committee**  
**By the Information Services Division**  
**Thursday, January 14, 1999**

The Governor has designated the Information Services Division as the Year 2000 coordinating agency for state government. Our responsibility includes those services provided by the Information Services Division. We have checked the telephone systems supporting state government agencies in locations through out the state and they are complaint. We have checked the equipment and software used by the wide area data network and it is complaint. We are 95% complete in remediating and testing the mainframe computer programs. We expect to be done by the first quarter of this year. The Information Services Division is also responsible to monitor the Year 2000 progress of each agency. The Governor's letter in October asked each agency to designate a Y2K coordinator and submit a monthly progress report to our office, which is compiled into a statewide report. The report is posted on the states' Year 2000 web site. A copy of the December report and Agency Good Faith Compliance Letter is attached.

Attachment:

**State of North Dakota**  
**Year 2000 Progress Highlights**  
Reporting Period: December, 1998

---

**Agency Monthly Status Reports:**

- ◆ 58 agencies have submitted monthly status reports.
- ◆ 6 agencies indicate completion of their Y2K efforts and have submitted Good Faith Compliance letters.
- ◆ 4 agencies have not submitted a status report, all of which are smaller agencies with minimal computing resources.
- ◆ Boards & Commissions are not included in the reporting process.
- ◆ Status reports are posted on the State's Y2K web site.

**Conversion of mainframe application software is 95% complete, up 3% from last month.**

Total application conversion involves the review of **187 applications** consisting of **20,435 programs** that accumulated to **4,163,897 lines of source code.**

**PC BIOS Checking:**

- ◆ ISD Desktop Support group has completed PC BIOS checking, by request, for these agencies:

|                       |                          |                       |
|-----------------------|--------------------------|-----------------------|
| Central Personnel     | Bureau of Indian Affairs | State Treasurer       |
| Industrial Commission | Risk Management          | Securities Commission |
| Municipal Bond Bank   | Governor's Office        | Secretary of State    |
| Banking & Finance     |                          |                       |
  
- ◆ Scheduled or Currently in progress:

|                                       |                               |
|---------------------------------------|-------------------------------|
| ISD (58% complete)                    | State Historical Society      |
| Intergovernmental Assistance          | Office of Management & Budget |
| ND University System - Administrative |                               |

**Issues or Comments:**

- ◆ Capitol facilities has been a concern among agencies as they prepare for Year 2000. Although the remediation efforts of information systems are well underway, those preparations will be in vain if the facilities in which they are housed are without heat or electricity. The Facility Management Division of OMB reports all energy management systems, elevators, and fire alarm systems to be Year 2000 compliant. The greatest concern is with the local utility company, provider of gas and electrical services to the capitol complex, who at this point have not issued a confirmation for Year 2000 compliance. The Facility Management Division is developing backup contingency plans to power the capitol's vital building systems in the event of a power failure.
  
- ◆ ISD continues to publish additional Year 2000 information on its Y2K website.

# Agency Year 2000 Status Report

December

Year 2000 Information and Readiness Act Disclosure

...sequenced by Agency Name

| Agency | Contact                            | Percent of Phase Complete |   |             |            |           |       | Compliance Letter        |
|--------|------------------------------------|---------------------------|---|-------------|------------|-----------|-------|--------------------------|
|        |                                    | Plan (on file)            | Assessment                                | Remediation | Validation | Implement |       |                          |
| 5400   | Adjutant General / Civil Air Patro | Holly Gaugler             | 80 % <input type="checkbox"/>             | 100 %       | 95 %       | 80 %      | 80 %  | <input type="checkbox"/> |
| 1400   | Administrative Hearings            | Frances Zuther            | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 100 %     | 95 %  | <input type="checkbox"/> |
| 4120   | Aeronautics Commission             | Mark J. Holzer            | 60 % <input type="checkbox"/>             | 60 %        | 60 %       | 80 %      | 40 %  | <input type="checkbox"/> |
| 6020   | Agriculture Department/Credit R    | Roberta Tjaden, Dat       | 80 % <input checked="" type="checkbox"/>  | 100 %       | 55 %       | 50 %      | 50 %  | <input type="checkbox"/> |
| 6030   | American Dairy Association         | Louise Gallagher          | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 95 %      | 90 %  | <input type="checkbox"/> |
| 1250   | Attorney General/Fire Marshall     | Cher Thomas               | 60 % <input type="checkbox"/>             | 70 %        | 35 %       | 35 %      | 30 %  | <input type="checkbox"/> |
| 4710   | Bank of North Dakota               | Phyllis Lasher            | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 70 %      | 70 %  | <input type="checkbox"/> |
| 4130   | Banking and Financial              | Lori L. Laschkewitsc      | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 100 %     | 100 % | <input type="checkbox"/> |
| 1102   | Central Personnel                  | Darwin Heinitz            | 100 % <input checked="" type="checkbox"/> | 70 %        | 45 %       | 40 %      | 40 %  | <input type="checkbox"/> |
| 1180   | Central Services                   | Leon Rauser               | 80 % <input type="checkbox"/>             | 90 %        | 90 %       | 85 %      | 85 %  | <input type="checkbox"/> |
| 3240   | Children Services Coordinating     | Karla Mittleider          | 100 % <input checked="" type="checkbox"/> | 100 %       | 100 %      | 40 %      | 20 %  | <input type="checkbox"/> |
| 5300   | Department of Corrections - Ad     | David Huhncke             | 100 % <input type="checkbox"/>            | 100 %       | 85 %       | 60 %      | 50 %  | <input type="checkbox"/> |
| 8010   | Department of Transportation       | Heather J. Liberda        | 100 % <input checked="" type="checkbox"/> | 80 %        | 55 %       | 45 %      | 40 %  | <input type="checkbox"/> |
| 6010   | Economic Dev & Fin/Ag. Product     | Connie Wagner             | 60 % <input type="checkbox"/>             | 80 %        | 80 %       | 35 %      | 20 %  | <input type="checkbox"/> |
| 5120   | Emergency Management               | Larry Ruebel              | 60 % <input type="checkbox"/>             | 95 %        | 95 %       | 70 %      | 70 %  | <input type="checkbox"/> |
| 1103   | Facilities Management              | Loren Haid or Curt        | 20 % <input type="checkbox"/>             | 85 %        | 85 %       | 60 %      | 70 %  | <input type="checkbox"/> |
| 7200   | Game and Fish                      | Jerry Gulke               | 100 % <input checked="" type="checkbox"/> | 100 %       | 100 %      | 80 %      | 60 %  | <input type="checkbox"/> |
| 3010   | Health Department                  | David Mayer               | 60 % <input type="checkbox"/>             | 80 %        | 80 %       | 75 %      | 75 %  | <input type="checkbox"/> |
| 5040   | Highway Patrol                     | Carrie Oswald             | 80 % <input type="checkbox"/>             | 100 %       | 55 %       | 25 %      | 20 %  | <input type="checkbox"/> |
| 7010   | Historical Society                 | Ronald Phil Warner        | 40 % <input type="checkbox"/>             | 65 %        | 50 %       | 40 %      | 50 %  | <input type="checkbox"/> |
| 4730   | Housing and Finance                | Franklin Kraft            | 80 % <input type="checkbox"/>             | 100 %       | 100 %      | 75 %      | 70 %  | <input type="checkbox"/> |
| 3250   | Human Services                     | Ronda Deichert            | 100 % <input checked="" type="checkbox"/> | 100 %       | 60 %       | 20 %      | 20 %  | <input type="checkbox"/> |
| 4050   | Industrial Commission - Adminis    | Shirley Campbell          | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 95 %      | 95 %  | <input type="checkbox"/> |
| 4052   | Industrial Commission - Geologi    | Tom Heck                  | 40 % <input checked="" type="checkbox"/>  | 75 %        | 55 %       | 100 %     | 55 %  | <input type="checkbox"/> |

| Agency                               | Contact              | Percent of Phase Complete                 |            |             |            |           |                                     | Compliance Letter |
|--------------------------------------|----------------------|---|------------|-------------|------------|-----------|-------------------------------------|-------------------|
|                                      |                      | Plan (on file)                            | Assessment | Remediation | Validation | Implement |                                     |                   |
| 4051 Industrial Commission - Oil and | Jim Lindholm         | 100 % <input type="checkbox"/>            | 95 %       | 60 %        | 35 %       | 25 %      | <input type="checkbox"/>            |                   |
| 1120 Information Services Division   | Larry Lee            | 100 % <input checked="" type="checkbox"/> | 95 %       | 85 %        | 40 %       | 40 %      | <input type="checkbox"/>            |                   |
| 4010 Insurance Department            | Laurie Scully        | 40 % <input type="checkbox"/>             | 75 %       | 65 %        | 55 %       | 55 %      | <input type="checkbox"/>            |                   |
| 1101 Intergovernmental Assistance    | Jim Boyd             | 80 % <input type="checkbox"/>             | 85 %       | 100 %       | 75 %       | 80 %      | <input type="checkbox"/>            |                   |
| 3800 Job Service North Dakota        | Chuck Helm           | 100 % <input checked="" type="checkbox"/> | 90 %       | 90 %        | 80 %       | 80 %      | <input type="checkbox"/>            |                   |
| 2260 Land Department                 | James Luptak         | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 1600 Legislative Council             | Maryann Trauger      | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 4750 Mill and Elevator               | Greg McLean          | 100 % <input type="checkbox"/>            | 70 %       | 55 %        | 20 %       | 20 %      | <input type="checkbox"/>            |                   |
| 4720 Municipal Bond Bank             | DeAnn Ament          | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 95 %      | <input checked="" type="checkbox"/> |                   |
| 1100 Office of Management and Budg   | Pam Schafer          | 20 % <input type="checkbox"/>             | 90 %       | 90 %        | 80 %       | 80 %      | <input type="checkbox"/>            |                   |
| 1010 Office of the Governor          | Kay A. Roth          | 100 % <input type="checkbox"/>            | 60 %       | 60 %        | 60 %       | 60 %      | <input type="checkbox"/>            |                   |
| 7500 Parks and Recreation            | Jeff Quast           | 100 % <input type="checkbox"/>            | 95 %       | 60 %        | 20 %       | 20 %      | <input type="checkbox"/>            |                   |
| 3600 Protection and Advocacy         | Corinne Hofmann      | 60 % <input type="checkbox"/>             | 100 %      | 80 %        | 60 %       | 40 %      | <input type="checkbox"/>            |                   |
| 1920 Public Employees Retirement     | Sharon Schiermeister | 60 % <input type="checkbox"/>             | 80 %       | 70 %        | 65 %       | 45 %      | <input type="checkbox"/>            |                   |
| 2010 Public Instruction              | Duane Schell         | 80 % <input type="checkbox"/>             | 85 %       | 85 %        | 55 %       | 55 %      | <input type="checkbox"/>            |                   |
| 4080 Public Service Commission       | Steve Kahl           | 100 % <input type="checkbox"/>            | 90 %       | 90 %        | 80 %       | 80 %      | <input type="checkbox"/>            |                   |
| 1900 Retirement and Investment Offic | Gary Vetter          | 80 % <input type="checkbox"/>             | 85 %       | 85 %        | 65 %       | 55 %      | <input type="checkbox"/>            |                   |
| 1104 Risk Management                 | Janet Marquart       | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 2530 School for the Blind            | Gary Bornsen         | 60 % <input type="checkbox"/>             | 90 %       | 95 %        | 95 %       | 90 %      | <input type="checkbox"/>            |                   |
| 1080 Secretary of State              | Bob Schaible         | 60 % <input type="checkbox"/>             | 70 %       | 75 %        | 40 %       | 50 %      | <input type="checkbox"/>            |                   |
| 4140 Securities Commission           | Diane Lillis         | 80 % <input type="checkbox"/>             | 100 %      | 100 %       | 95 %       | 95 %      | <input type="checkbox"/>            |                   |
| 1170 State Auditor                   | Donald LaFleur       | 100 % <input type="checkbox"/>            | 100 %      | 75 %        | 55 %       | 20 %      | <input type="checkbox"/>            |                   |
| 2560 State Electrical Board          | Bonnie Schmidt       | 60 % <input type="checkbox"/>             | 90 %       | 85 %        | 75 %       | 60 %      | <input type="checkbox"/>            |                   |
| 2500 State Library                   | Todd Bodvig          | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 5060 State Radio                     | Rick Hessinger       | 20 % <input type="checkbox"/>             | 65 %       | 65 %        | 60 %       | 45 %      | <input type="checkbox"/>            |                   |
| 1200 State Treasurer                 | Carol M. Siegert     | 100 % <input checked="" type="checkbox"/> | 100 %      | 100 %       | 100 %      | 100 %     | <input type="checkbox"/>            |                   |
| 1800 Supreme Court                   | Kurt Schmidt         | 80 % <input type="checkbox"/>             | 50 %       | 25 %        | 25 %       | 25 %      | <input type="checkbox"/>            |                   |



| <i>Agency</i>                         | <i>Contact</i>     | <i>Percent of Phase Complete</i>          |                   |                    |                   |                  |                                     | <i>Compliance Letter</i> |
|---------------------------------------|--------------------|---|-------------------|--------------------|-------------------|------------------|-------------------------------------|--------------------------|
|                                       |                    | <i>Plan (on file)</i>                     | <i>Assessment</i> | <i>Remediation</i> | <i>Validation</i> | <i>Implement</i> |                                     |                          |
| 1270 Tax Department                   | Becky Herrmann     | 60 % <input type="checkbox"/>             | 60 %              | 35 %               | 20 %              | 20 %             | <input type="checkbox"/>            |                          |
| 7400 Tourism Department               | Pat Hertz          | 100 % <input type="checkbox"/>            | 100 %             | 100 %              | 100 %             | 100 %            | <input checked="" type="checkbox"/> |                          |
| 2150 University Systems-Administrativ | Marty Hoag         | 100 % <input type="checkbox"/>            | 50 %              | 45 %               | 25 %              | 20 %             | <input type="checkbox"/>            |                          |
| 3210 Veterans Affairs                 | Cathy Halgunseth   | 60 % <input type="checkbox"/>             | 100 %             | 65 %               | 50 %              | 40 %             | <input type="checkbox"/>            |                          |
| 3130 Veterans Home                    | Jacie Grenier      | 80 % <input type="checkbox"/>             | 70 %              | 70 %               | 50 %              | 20 %             | <input type="checkbox"/>            |                          |
| 6250 Wheat Commission                 | Kathryn Michlitsch | 100 % <input type="checkbox"/>            | 95 %              | 95 %               | 95 %              | 95 %             | <input type="checkbox"/>            |                          |
| 4850 Workers Compensation             | Cathie Forsch      | 100 % <input checked="" type="checkbox"/> | 100 %             | 100 %              | 75 %              | 60 %             | <input type="checkbox"/>            |                          |

**Total Agencies Reporting: 58**

# *Good Faith Compliance Letters received*

*Year 2000 Information and Readiness Act Disclosure*

| <i>Agency</i>            | <i>Date letter was received</i> |
|--------------------------|---------------------------------|
| 2260 Land Department     | 11/30/98                        |
| 1600 Legislative Council | 10/22/98                        |
| 4720 Municipal Bond Bank | 11/3/98                         |
| 1104 Risk Management     | 11/6/98                         |
| 2500 State Library       | 12/3/98                         |
| 7400 Tourism Department  | 12/31/98                        |

|                                |   |
|--------------------------------|---|
| <i>Total Letters Received:</i> | 6 |
|--------------------------------|---|

## *Agencies not submitting a Status Report*

| <i>Agency</i>            | <i>Comments:</i>            |
|--------------------------|-----------------------------|
| 2011 Independent Study   |                             |
| 4060 Labor Department    |                             |
| 2520 School for the Deaf |                             |
| 7700 Water Commission    | working on status report... |

|   |          |
|---|----------|
| <i>Total Agencies not submitting a status report:</i> | <b>4</b> |
|---|----------|

**Agency Good Faith Compliance Letter**  
Year 2000 Information and Readiness Act Disclosure

**Date:** \_\_\_\_\_

**TO:** Jim Heck, CIO  
Information Services Division

**FROM:** \_\_\_\_\_  
Agency Director

**RE:** Year 2000 Compliancy

The (agency) is aware of the issues regarding the Year 2000 compliance problem. Our agency has addressed this issue in good faith and certify that we are compliant in accordance with our agency Y2K compliance plan.

Our compliance is based on our evaluation, assessment, testing and correction of computer related systems, including mainframe, mid-range, and desktop hardware and software applications and data, as well as data interfaces into and out of the agency, and telecommunications systems, and non-IS systems such as mechanical and building control systems that were identified as systems to be tested and corrected. Due to budget and workforce restrictions some agency systems may have been determined not to be mission critical and were not included in the testing and correction phase of the agency's Y2K compliance plan.

In addition, contingency plans have been developed for all systems identified as "Mission Critical".

All our systems meet the state's standards of Year 2000 compliance, which is defined as:

- Data structures (databases, data files, etc.) provide 4-digit date century recognition. Example: "1996" provides date century recognition, "96" does not.
- Stored data contains date century recognition, including (but not limited to) data stored in databases and hardware/device internal system dates.
- Calculations and program logic accommodate both same century and multi-century formulas and data values. Calculations and logic include (but are not limited to) sort algorithms, calendar generations, event recognition, and all processing actions that use or produce data values.
- Interfaces (to and from other systems or organizations) prevent non-compliant dates and data from entering or exiting any state system.
- User interfaces – (i.e., screens, reports, etc.) accurately show 4-digit years (if critical to business functions).
- Year 2000 is correctly treated as a leap year within all calculation and calendar logic.

**TESTIMONY TO THE  
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
Prepared January 14, 1999, by  
Mark A. Johnson, Executive Director  
North Dakota Association of Counties**

**RE: House Bill 1037**

Mr. Chairman and members of the Committee, I am Mark Johnson, Executive Director of the North Dakota Association of Counties. I am here on behalf of the 53 counties and 600 elected county officials to express their support for House Bill 1037 and the comprehensive amendments offered by the Risk Management Division of OMB.

As has been thoroughly explained, the liability exposures for all levels of government are largely unknown and impossible to quantify at this time. Due to the nature of many of the services delivered by counties, the risk of costly and time-consuming litigation is large. Counties individually, and jointly with State agencies, deliver a host of critical life-safety related services for the citizens of this State. Economic assistance through multiple public and private computer and communication systems; and radio dispatching and E-911 are two of the most obvious examples. Automated security systems for jails and juvenile detention centers are another area that can be noted. Although it is unlikely that property owners would sue if they did not receive a property tax statement, those other entities that rely on the revenue collected may feel otherwise. Clearly, counties and their citizens have a lot riding on these automated systems. This Association and our members recognize this fact, and numerous efforts have been made, and are being made, to address the issue of Y2K.

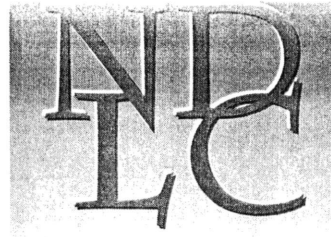
Our Association, in conjunction with the National Association of Counties, began saturating our counties with educational and informational material well over a year ago. This culminated with a major presentation and training session at our 1998 Annual Conference and Training Exposition. In preparation for this event, our Association asked the Interim Information Management Committee and the Legislative Council to allow us to expand the Legislature's contract with Intelliant, to include a Y2K assessment of two sample counties. Stutsman and Adams Counties were chosen and the results of their assessments were provided to all counties at our conference as one possible road map for those counties that had not yet initiated formal Y2K efforts.

The joint delivery of so many social service programs has made the Y2K effort in this area a state/county cooperative effort. The State has taken a strong lead in addressing the mainframe, processing, and communication issues, leaving the hardware and local productivity software to the counties efforts. The Association of Counties has contracted its automation support staff to the majority of Registers of Deeds in order to address their concerns with respect to the UCC/CNS system they operate in conjunction with the Secretary of State. Similarly, NDACo has contracted with the Bureau of Criminal Investigation to assist those State's Attorneys that use the automated State's Attorneys Management System or SAMS.

Counties operating dispatch centers and E-911 systems are working with their vendors to ensure their systems and equipment are Y2K ready. Likewise, those county correctional facilities with automated security systems are coordinating their efforts with their suppliers and equipment vendors. User groups of the two primary property tax/accounting systems installed in more than 40 counties have been working with these software developers to ensure Y2K compliance. In all of these efforts, the State's Information Services Division has been an outstanding resource and a tremendous help.

It is obvious however, that the resources to address the Y2K issue are not as readily available to some counties as to others. The largest counties have possibly the greatest exposure, but also they have in-house automation support staff and generally better access to outside professionals. Our most rural counties have possibly more limited exposure to liability, but also fewer resources with which to address the issue.

House Bill 1037, with the proposed amendments, can give our local governments, and ultimately the property taxpayers that must fund any judgments, reasonable protection. Certainly not license to stop what their doing, or do less than they can, but to know that if they do what they can it will be recognized as that. County government strongly urges your support of this protection.



## *North Dakota League of Cities*

*House Bill 1037*

### *Government and Veteran Affairs Committee*

**January 14, 1999**

**Connie Sprynczynatyk, Executive Director**

The North Dakota League of Cities appreciates the opportunity to testify in support of legislation to grant immunity to the state and political subdivisions from claims arising from Year 2000 issues.

As the state's policy-making body, the legislature, through the work of the interim Information Technology Committee, has expressed its interest in the efforts of local and state government to prepare for this impending challenge. Others will present information about the work accomplished by state agencies to ensure business as usual after January 1, 2000. My purpose is to inform you about the similar efforts of local governments.

You can imagine that, among the 361 incorporated cities ranging in size from 2 (Hove Mobile Park) to 75,000 (Fargo), there are significant differences in both process and progress. Some cities have few opportunities to worry about computers because little of the city operation is computerized, while others are dependent on computers to keep operations moving. Y2K readiness is in many stages but the determination is there to assess, repair or replace, test and develop contingency plans.

The League of Cities has focused on awareness and education through mailings, seminars and articles. Our web page has links to useful Y2K sites. We are using every contact with city officials to talk about the issues, but it is the job of every unit of local government to accomplish the real work.

Cities have used varying techniques to assess computer-dependent, mission-critical operations. Examples of successes and failures are replete, but many cities—particularly the larger ones—have taken stock, tested equipment and made changes. The following are examples of activities in several cities around the state.

Minot's web page includes a count-down clock, a matrix of departments and the status of their testing efforts, as well as links to other useful Y2K sites (<http://web.ci.minot.nd.us/y2k.htm>).

Jamestown's engineering department has completed its inventory of all critical systems containing embedded chips, such as lift station control panels and telemetry, and water and waste water treatment control panels. According to Darrell Hournbuckle, they are finding equipment with embedded chips or micro-processors that fall into two categories: older equipment with no date function and equipment new enough to be fully compliant. Sorting out "benign" versus "problem" has been a challenge.

Bismarck recently agreed to schedule a spring table-top emergency preparedness exercise with all public and private entities that will mean life as usual or a pause in daily routines. Fargo has a similar effort

underway with a community task force convened by the mayor to make sure the power is on, water is available and business is running in the new millennium. Education and medical institutions, emergency responders and utility companies are participating with city departments to address problems prospectively.

Some have suggested that if the legislature passes immunity legislation, state and local government will have a false sense of security and it will lessen the sense of urgency to fix the problem. Nothing could be further from the truth.

**Cities are dynamic places where people live and work. City governments provide necessary services that allow business to be conducted, health needs to be addressed and children to be educated. Much of the revenue to provide essential city services comes from taxes and fees for services. Commerce, essential services and community life are inextricably linked. Local government has every reason in the world to fix the problem *before* disaster strikes. This legislation will not lessen the urgency with which local government is tackling the problem.**

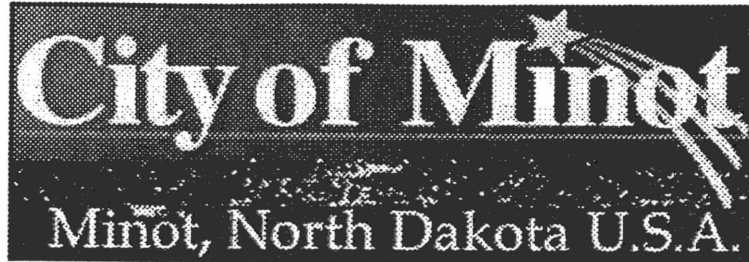
Protection from Y2K claims, provided local government has made good faith efforts to address the issues prospectively, makes sense. Without it, taxpayers will foot the bill for defense against claims and for payment of any judgments. With it, local government can spend its limited resources on fixing the problems.

With a definition of good faith, this legislation will provide essential protection for the taxpayers in North Dakota. This bill demonstrates good stewardship of the state's resources.

Thank you for the opportunity to support this legislation.



**The Year 2000 is closer than you think. It will arrive in:**



The City of Minot has been making and will continue to make every reasonable good-faith effort, on a comprehensive basis, to identify and to nullify any "Year 2000" problems which may inhere in its data management operations and in its general operations. However, it is not an insurer and does not insure that there will be no "Year 2000" difficulties or problems in its operations, particularly in view of its necessary reliance on third parties (such as providers of utility and telecommunication services) which may have their own "Year 2000" problems.

Welcome to the City of Minot's year 2000 page. This page reports the efforts of all the city departments. The City of Minot has been involved in a concerted effort across all departments to investigate and remediate any possible effects of the year 2000. We hope to convey that we consider the problem to be of a serious nature and that we will remediate any non-compatible systems.

|  |                              |
|--|------------------------------|
| <a href="#">Status Sheet</a>             | <a href="#">Links</a>        |
| <a href="#">Minutes of Y2K Committee</a> | <a href="#">Project Plan</a> |

**Suggested specification to be added to all City bid or quote requests:**

To the extent the product for which bids are being solicited (1) contains as an integral part thereof, or (2) is dependent for support and maintenance upon, one or more microprocessors or central processing units, each such microprocessor or central processing unit shall be Y2K compliant, that is, shall accept and use without flaw dates beyond December 31, 1999. Further, to the extent such product must use or interact with software or computer instructions supplied as an integral part of the product, or which are necessary for the product to meet bid specifications or to fulfill its intended function, such software or computer instructions shall likewise in the same fashion be Y2K compliant.

| LINKS  |  |  |
|--|--|--|
| <a href="#">EDS Directory of Vendor Compliance</a> | <a href="#">US Army Database of Compliance Information</a>             | <a href="#">The Year 2000 Information Center</a> |
| <a href="#">State of North Dakota</a>              | <a href="#">State of Montana</a>                                       | <a href="#">State of Minnesota</a>               |
| <a href="#">Year 2000 Registry</a>                 | <a href="#">USA Federal Government Year 2000 Information Directory</a> | <a href="#">Vendor Search</a>                    |

**Status Sheet**

Updated 12/15/98

| System                                   | Responsible Department          | Vendor        | Phase                               | Remedial Action         | Cost   |
|--|---------------------------------|---------------|-------------------------------------|-------------------------|--------|
| <a href="#">Assessment</a>               | <a href="#">Assessor</a>        |               |                                     |                         |        |
| <a href="#">Building Controls</a>        | <a href="#">Prop Maint</a>      | Various       | <a href="#">Assessment</a>          |                         |        |
| <a href="#">Inspection</a>               | <a href="#">Inspection</a>      |               |                                     |                         |        |
| <a href="#">Engineering</a>              | <a href="#">Engineer</a>        |               |                                     |                         |        |
| <a href="#">CADispatch</a>               | <a href="#">PD</a>              | NWS           | <a href="#">Assessment</a>          | <a href="#">Upgrade</a> |        |
| <a href="#">E911</a>                     | <a href="#">PD</a>              | SRT           | <a href="#">Implementation</a>      | <a href="#">Replace</a> | 50,000 |
| <a href="#">Financial Software</a>       | <a href="#">Finance</a>         | HTE           | <a href="#">Implementation</a>      | <a href="#">Upgrade</a> |        |
| <a href="#">Fire Department</a>          | <a href="#">Fire Dept</a>       |               |                                     |                         |        |
| <a href="#">Flood Control Warning</a>    | <a href="#">Water Plant</a>     |               | <a href="#">Implementation</a>      | <a href="#">Upgrade</a> |        |
| <a href="#">Inspection</a>               | <a href="#">Inspection</a>      |               |                                     |                         |        |
| <a href="#">Imaging Software</a>         | <a href="#">Finance</a>         | InfoSysInc    | <a href="#">Assessment</a>          |                         |        |
| <a href="#">Meter Reading Software</a>   | <a href="#">Utility Billing</a> | HTE,Radix,NSP | <a href="#">Implementation</a>      | <a href="#">Upgrade</a> | 500    |
| <a href="#">PCs</a>                      | <a href="#">Each</a>            | Various       | <a href="#">Testing for Ability</a> | <a href="#">Replace</a> | 17,000 |
| <a href="#">Police Department</a>        | <a href="#">Police Dept</a>     |               |                                     |                         |        |
| <a href="#">Police Records</a>           | <a href="#">PD</a>              | NWS           | <a href="#">Assessment</a>          | <a href="#">Upgrade</a> |        |
| <a href="#">Public Works</a>             | <a href="#">Public Works</a>    |               |                                     |                         |        |
| <a href="#">Sewage Pumping</a>           | <a href="#">W&amp;S Maint</a>   |               | <a href="#">Assessment</a>          |                         |        |
| <a href="#">Special Assmts</a>           | <a href="#">Finance</a>         | NWS           | <a href="#">Implementation</a>      | <a href="#">Upgrade</a> |        |
| <a href="#">Traffic control</a>          | <a href="#">Traffic Eng</a>     |               | <a href="#">Assessment</a>          |                         |        |
| <a href="#">Utility Billing Software</a> | <a href="#">Utility Billing</a> | HTE           | <a href="#">Implementation</a>      | <a href="#">Replace</a> | 7,000  |
| <a href="#">Water treatment</a>          | <a href="#">Water Plant</a>     |               | <a href="#">Assessment</a>          |                         |        |
| <a href="#">MAFB</a>                     |                                 |               |                                     |                         |        |

**Testimony of Steven L. Spilde  
to the  
N.D. House Government and Veterans Affairs Committee  
Concerning House Bill No. 1037  
January 14, 1999**

Mr. Chairman and members of the North Dakota House Government and Veterans Affairs Committee, my name is Steve Spilde. I am the Chief Executive Officer of the North Dakota Insurance Reserve Fund (NDIRF) and offer the following testimony in support of House Bill No. 1037. Particularly, the NDIRF supports amendments that would restructure the entire bill to provide immunity to political subdivisions and the state from claims alleging damage due to failure of technology to accommodate the Year 2000 date change.

Although numerous authors have speculated, no one can know the actual extent of Year 2000 computer-related problems at this time. It is an event (or, hopefully, a non-event) that is historically unique in the respect we know it's coming and we know exactly when it's coming but are uncertain what its effect will be.

The possibility of interruption of basic services due to Year 2000-related computer equipment or program failure exists, even in the face of preparations to avoid it. Nevertheless, the NDIRF will be expending a good deal of effort to assist political subdivisions in those preparations.

Having spent a quarter-million dollars to revise and upgrade its own technology to Year 2000 compliance, the NDIRF is aware of what preparation can cost. As the liability coverage carrier for most political subdivisions in North Dakota, the NDIRF is also aware of the potential cost of defending a multitude of claims alleging political subdivisions should have done more to prevent Year 2000-related failures. This cost would ultimately be borne by local taxpayers.

Scarce government resources are far better spent attempting to prevent or repair situations that may arise from Year 2000-related failures than defending lawsuits stemming from them. There's an old saying that it's more important to fix the problem than to fix the blame. It has never been a more appropriate view than when applied to this situation. Amendments offered today that would entirely restructure HB 1037 to provide Year 2000 immunity to political subdivisions and the state constitute a straightforward, uncomplicated declaration of public policy to that end.

I would be pleased to answer any questions committee members may have.

Thank you.

TESTIMONY BY DALE W. MOENCH  
ON BEHALF OF  
NORTH DAKOTA TRIAL LAWYERS ASSN.  
BEFORE  
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

January 14, 1999

HB 1037

Relating to liability of the state-Y2K

Chairman Klein and members of the Committee.

My name is Dale Moench and I am an attorney with the Bismarck law firm of Schmitz, Moench and Schmidt. I am appearing here today on behalf of and as a member of the governing board of the North Dakota Trial Lawyers Association.

Our association is made up of attorneys who represent people, businesses, and organizations advising them about claims and try their lawsuits relating to claims relating to damages that they are entitled to pursue. We have no direct interest in HB 1037, except as it may affect those who come to us as clients after sustaining injuries or damages from some malfunction of a computer system on January of the year 2000.

I must say that as an attorney I was looking for a Bill to deal with the Y2K concerns on behalf of the people of North Dakota, as well as the state and its political subdivisions. I am somewhat surprised to see HB 1037 focus primarily on how the state of North Dakota can avoid responsibility for the consequences to a citizen or a business or other organization in the state resulting from some glitch in the computer systems of our state and local governments.

I am surprised at the language at the beginning of each of the three sections, "the state is not liable", or "the political subdivision is not liable", rather than some language which might set up some timetables for reporting consequences of a computer failure, procedures that must be followed to mitigate damages from such failure, or other procedures to prevent unfounded or inconsequential claims from being imposed upon the state or federal government under these conditions.

I will discuss different categories or approaches to an analysis of this bill which appears clear to me:

1. Sovereign Immunity - The very approach in the beginning of Sections 1 and 2 stating that the state is not liable for certain claims can have validity only if it is predicated upon governmental immunity, an immunity that has been set aside by the Supreme Court several years ago

and has been acknowledged by the enactment of legislation in the 1997 Session to accommodate limitations and conditions upon presentation of such claims against the state. Governmental immunity for political subdivisions has been set aside by our courts over 20 years ago, yet it appears in Section 2 at the end of the statutory immunization of liability upon political subdivisions.

2. Arbitrary Guidelines for Testing Compliance of Computer or Telecommunications Equipment or Devices - The numbers (1) through (6) of each section of the Bill sets forth what appears to be some criteria or guidelines upon which the legislation could predicate a presumption of compliance to prevent liability for malfunction of such equipment or devices, but the attempt to declare by legislation that the existence of these six conditions removes any liability upon the state for claims arising under these conditions is not consistent with the prior removal of governmental immunity. I would suggest that if such criteria are used as a basis for a presumption of compliance, there should at least be a number 7 and number 8 added to that list. Number 7 should be: "(7) State of the art implementation of computer hardware and software telecommunications network and devices containing computer processor that the (state) (political subdivision) has knowledge of or should have had knowledge of in time to

implement by January 1, 2000." and number 8 should be: "(8) Any other technology or computer programming that the court might find as a proper criteria for determining whether the state acted in good faith preparing for the January 1, 2000 computer concerns."

3. Criteria Should Be Used as Rebuttable Presumptions or Inferences of Compliance Rather than a Hard and Fast Rule of Compliance

- This Legislature has on several occasions in the past dealt with difficult liability questions by using rebuttable presumptions as a method of addressing compliance with safety measures to support a defense. I call the Committee's attention to attachments A and B to this testimony in that regard.

Attachment A deals with the presumption of compensability for certain conditions of full time paid firefighters and law enforcements officers. That section also contains the limitations upon which this presumption can exist or can be rebutted.

Attachment B refers to rebuttal presumption against defects in products liability actions. A rebuttable presumption that a product is free from any defect where it can be shown that the plans, design, and instructions for the product's use are in conformity with government standards established for that industry, or where other industry standards

were in existence at the time.

That section does not state as HB 1037 does that "the state is not liable for a claim" if these six conditions had existed, but rather creates a rebuttable presumption which still allows action to be brought and a showing made that the presumption of a safe product can be rebutted.

What would happen as a practical matter is that a process would start with a rebuttable presumption or inference that the state or political subdivision has met the test for compliance, but would enable other evidence to be offered by the claimant to rebut that presumption if possible. From the end of this legislative session to January 1st, there might very well be another technological development in this area which has not been acknowledged in these six itemized criteria.

4. Notification Requirements, Recovery Limitations, Timetable Provisions, and Prescribed Procedures - This legislation could be drafted so that timetables for making claims from date of discovery of the glitch in the computer system of the state or political subdivision would be reported, or to give an opportunity to the governmental body to make the corrections mechanically or otherwise in as timely as a manner as possible. Such legislation should include certain procedures that individuals and businesses might have to employ to reduce exposure of damages or minimize the



likelihood of being affected by a glitch in the governmental entity's system. Such legislation could also include some condition as to the preparation made by the potential claimant for damages in anticipation of the year 2000 concerns in the standby provisions that might have been made to accommodate the minimizing of damages if a problem does result. While there are limitations in time and procedure already in the law for claims made against the state and political subdivisions, there certainly would be justification for setting very short time limits within which corrective action, remediation and anticipation with the governmental bodies would be a condition for making the claim for damages or at least for claiming the total damages resulting from the problems.

Limitations should also be set for damages resulting from outside business, individuals, or other public agencies causing damages through the state system because they were not Y2K compliant.

A suggestion that an otherwise diligent, competent, updated business or person should be barred from recovering damages against the governmental body arising out of an error caused by a government computer is certainly not in keeping with the abolition of the doctrine of sovereign immunity by the Supreme Court, nor is it consistent with the legislation passed in the 1997 Session enabling claims to be made under

certain conditions against the state and political subdivisions.

5. A report of the ND Legislative Council - A report at page 232 references HB 1034 which requires the information technology committee, the information services division and the legislative council and other state agencies to develop and coordinate the development of state-wide plans to meet the concerns of Y2K problems. However, the report also acknowledges at page 241 that if certain state agencies who develop their own software programs fail to meet the criteria for avoiding Y2K problems should citizens and businesses in North Dakota or elsewhere be penalized resulting from that process without having an opportunity to present a claim for those damages against the state or political subdivision.

The report at page 244 indicates that the Committee recommends HB 1037 to limit state and political subdivision liability for failure to become Y2K compliant. The report also expresses the concerns of the Committee members that conditioning liability upon a lack of good faith effort is a qualification necessary to insulate the entities from liability for failure to implement or continue Y2K compliance efforts.

### **SUMMARY**

After this review of the bill it is apparent that it was drafted without regard to the fact that the state has no governmental immunity and cannot

establish such immunity by writing it into a statute.

The statute should be drawn to provide procedures and timetables to minimize the damages that could be claimed or result from these computer problems and provisions for mitigating efforts of the claimant when the glitches are identified, rather than to allow the loss to be prolonged and enlarged over a period of time.

The ND Trial Lawyers are not taking the position that there should not be some legislation to deal with the Y2K problem at this time, however, the attempt to invoke an immunity from liability by setting up six arbitrary conditions as guidelines for judging compliance does not appear to meet the constitutional test for due process and fair opportunity for claiming damages resulting from actions or omissions of a state or local governmental agency.

We will be happy to review the testimony offered on this bill by various persons today and work with those that would seek our help in devising language that could be compatible with the rights of the citizens of the state and yet limit the exposure of the state and the political subdivisions for substantial liability for damages which result from the Y2K problem.

A.

**65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.** Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the

employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

**28-01.3-09. Rebuttable presumption against defects.** There is a rebuttable presumption that a product is free from any defect or defective condition where the plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product were in conformity with government standards established for that industry or where no government standards exist then with applicable industry standards, which were in existence at the time the plans, designs, warnings, or instructions for the product or the methods and techniques of manufacturing, inspecting, and testing the product were adopted.

Source: S.L. 1995, ch. 305, § 1.

**Effective Date.**

This section became effective August 1, 1995.

ORDINARY NEGLIGENCE

"Ordinary negligence" is the lack of ordinary care and diligence required by the circumstances. Ordinary care or diligence means such care as a person of ordinary prudence usually exercises about his own affairs of ordinary importance.

Negligence involves a lack of such concern for the probable consequences of an act or failure to act as a person of ordinary prudence would have had in conducting his affairs. It is the lack of such care as persons of common sense and ordinary prudence usually exercise under the same or similar circumstances. Negligence is a relative term. Whether a certain act or failure to act is negligence depends upon the facts and circumstances of each particular case.

The duty to use care is based upon knowledge of danger. The care that a person must exercise in a particular situation is in proportion to the degree of danger of injury to himself or to others in the act to be performed. The care necessary to constitute the ordinary care required of a person upon any particular occasion is measured by reference to the circumstances of danger known to him at the time or which reasonably he should have foreseen. The greater danger the greater is the care required.

A person is presumed to have performed his duty and to have exercised ordinary care, unless the contrary is shown by the greater weight of the evidence. The mere fact that a mishap occurred, considered alone, is not in itself evidence of negligence on the part of any of the people involved. You have no right to assume that the mishap was caused by negligence or other wrongful conduct of anyone.

[If the standard of care required in any given situation is prescribed by the laws of this state, a failure to observe that standard is evidence of negligence.]

\* \* \* \* \*

The bracketed paragraph should be used only if the violation of a particular statute is involved.

NDCC 1-01-14, 1-01-15, 1-01-16, and 1-01-17

Johnson v. Ry. 54 N.D. 351, 209 N.W. 789 (Violation of statute is negligence per se.)

George v. Odenthal, 58 N.D. 209, 225 N.W. 323 (Violation of statute is negligence: rule of absolute liability.)

Attleson v. Boomgarden, 73 N.W. 2d 448 (N.D. 1955) (Violation of statute is "evidence" of negligence.)

Saetz v. Braun, 116 N.W. 2d 628 (N.D. 1962)

Chicago, M., St. P. & P.R. Co. v. Johnston Fuel Liners, 122 N.W. 2d 140 (N.D. 1973)

65 C.J.S., Negligence, Sec. 11 (4) (b)

See also NDJI-CIVIL 110, Gross Negligence.

GROSS NEGLIGENCE DEFINED

"Gross negligence" is the lack of slight care and diligence. Slight care or diligence means such care or diligence as a person of ordinary prudence usually exercises about his own affairs of slight importance. Gross negligence is, to all intents and purposes, no care at all. It is the lack of the care that the most inattentive and thoughtless persons seldom fail to take of their own affairs. It shows a reckless temperament. It is a lack of care that is practically willful in its nature.

Conduct arising from momentary thoughtlessness, inadvertence, or from an error of judgment is not gross negligence, because it neither shows a reckless temperament nor a lack of care that is practically willful.

\* \* \* \* \*

NDCC 1-01-14, 1-01-15, 1-01-16, and 1-01-17

Erickson v. Foley, 65 N.D. 737, 262 N.W. 177  
Norgart v. Hoselton, 77 N.D. 1, 20 N. W. 2d 427  
Rokusek v. Bertsch, 87 N.D. 420, 58 N.W. 2d 657  
Sheets v. Pendergrast, 106 N.W. 2d 1 (N.D.1960)  
Holcomb v. Striebel, 133 N.W. 2d 435 (N.D. 1965)  
Bjerke v. Heartso, 183 N.W. 2d 496 (N.D. 1971)

See also: NDJI-CIVIL 100, Responsibility for Conduct, and NDJI-CIVIL 105, Ordinary Negligence.



Bonnie Larson Staiger  
#52  
ND Trial Lawyers

Proposed Amendments for HB 1037

Chairperson Klein and members of the House Government and Veterans Affairs Committee:

You've heard and received testimony from Dale Moench of the ND Trial Lawyers outlining some concerns we have regarding this bill.

If this bill seeks to grant the state immunity from liability, its people should also be afforded the presumption of compliance. To protect the health, safety, and welfare of North Dakota citizens, we respectfully request your consideration of the following amendment to each section of the bill:

(7) State of the art implementation of computer hardware and software telecommunications network and devices containing computer processor that the (state) (political subdivision) has knowledge of or should have had knowledge of in time to implement by January 1, 2000.

(8) Any other technology or computer programming that the court might find as proper criteria for determining whether the state acted in good faith preparing for the January 1, 2000 computer concerns.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 1, line 1, after “Act” insert “to create and enact a new section to chapter 28-01.3 of the North Dakota Century Code, relating to the liability of a manufacturer for a year 2000 claim;”

Page 1, line 3, after the semicolon insert “to amend and reenact section 28-01.3-04 and section 28-01.3-06 of the North Dakota Century Code, relating to the liability of a nonmanufacturing seller for a year 2000 claim and the determination of a defective product;”

Page 1, line 16, after the comma insert “the state is presumed to have made a good-faith effort to make the”

Page 1, line 16, “computer” insert “hardware”

Page 1, line 16, after “or” insert “software.”

Page 1, line 17, remove “equipment” and insert “network.”

Page 1, line 17, remove “devices are” and insert “device containing a computer processor”

Page 1, line 17, after “if” insert “all of the following conditions are met”

Page 1, line 18, replace “date” with “data” and replace the period with a semicolon

Page 1, line 20, replace the period with a semicolon

Page 1, line 22, replace the period with a semicolon

Page 1, line 24, replace the period with a semicolon

Page 2, line 2, replace the period with a semicolon and insert “and”

Page 3, line 7, after the comma insert “a political subdivision is presumed to have made a good-faith effort to make the”

Page 3, line 7, after “computer” insert “hardware”

Page 3, line 7, after “or” insert “software.”

Page 3, line 8, remove “equipment” and insert “network.”

Page 3, line 8, remove “devices are” and insert “device containing a computer processor”

Page 3, line 9, after “if” insert “all of the following conditions are met”

Page 3, line 10, replace “date” with “data” and replace the period with a semicolon

Page 3, line 12, replace the period with a semicolon

Page 3, line 14, replace the period with a semicolon

Page 3, line 16, replace the period with a semicolon

Page 3, line 18, replace the period with a semicolon and insert the word “and”

Page 5, line 17, after the comma insert “the state is presumed to have made a good-faith effort to  
make the”

Page 5, line 17, after “computer” insert “hardware”

Page 5, line 17, after “or” insert “software.”

Page 5, line 18, remove “equipment” and insert “network.”

Page 5, line 18, remove “devices are” and insert “device containing a computer processor”

Page 5, line 19, after “if” insert “all of the following conditions are met”

Page 5, line 20, replace “date” with “data” and replace the period with a semicolon

Page 5, line 22, replace the period with a semicolon

Page 5, line 24, replace the period with a semicolon

Page 5, line 26, replace the period with a semicolon

Page 5, line 28, replace the period with a semicolon and insert the word “and”

**SECTION 4.** A new section to chapter 28-01.3 of the North Dakota Century Code is created and enacted to read as follows:

**Claims resulting from year 2000 date change computer failures prohibited.** Except to the extent liability is expressly assumed under warranty or contract, a manufacturer is not liable for a claim which is the result of the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the manufacturer has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this section, a manufacturer is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if all of the following conditions are met:

1. The data structures provide four-digit date recognition;
2. Any stored data contains date century recognition, including data stored in data bases and hardware or device internal system dates;
3. The calculations and program logic accommodate same century and mult century formulas and data values;
4. The interfaces prevent noncompliant dates and data from entering or exiting any system operated or used by an initial user or consumer;
5. The user interfaces accurately show four-digit years when critical to business functions; and

6. The year 2000 or any other leap year is correctly treated as a leap year within all calculation and calendar logic.

**SECTION 5. AMENDMENT.** Section 28-01.3-04 of the North Dakota Century Code is amended and reenacted to read as follows:

1. In any products liability action or an action involving a year 2000 claim maintained against a seller of a product who did not manufacture the product, the seller shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.
2. After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:
  - a. That the certifying seller exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.
  - b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.
  - c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.

In an action involving a year 2000 claim, a seller who is not dismissed shall be

entitled to the same presumption of a good-faith effort as a manufacturer, subject to the same conditions as a manufacturer.

3. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying seller if the plaintiff can show any of the following:
  - a. That the applicable statute of limitation bars a product liability action against the manufacturer of the product allegedly causing the injury, death, or damage.
  - b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.

In the event a certifying seller is reinstated in an action involving a year 2000 claim, a certifying seller shall be entitled to the same presumption of a good-faith effort as a manufacturer, subject to the same conditions as a manufacturer.

**SECTION 6. AMENDMENT.** Section 28-01.3-06 of the North Dakota Century Code is amended and reenacted to read as follows:

**28-01.3-06. Determination of defective product.** No product may be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer. This section does not apply to a product involved in a year 2000 claim.

Renumber accordingly

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037 (GN)**

Page 1, line 1, after "chapter" delete "28-01.3 and a new section to".

Page 1, line 2, remove "chapter".

Page 1, line 3, after "equipment" remove "and to the liability".

Page 1, line 4, remove "of a manufacturer for a year 2000 claim" and "sections 28-01.3-04,".

Page 1, line 5, remove "28-01.3-06,".

Page 1, line 8, replace "and to the liability of a nonmanufacturing seller for a year 2000 claim and the" with "; and to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to year 2000 information requests.".

Page 1, remove line 9.

Page 1, remove lines 11 through 24.

Page 2, remove lines 1 through 30.

Page 3, remove lines 1 through 20.

Page 3, line 21, replace "4" with "1".

Page 4, line 2, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 4, remove lines 3 through 13.

Page 4, line 14, replace "5" with "2".

Page 5, line 13, after "subdivision" insert "has not acted with gross negligence or".

Page 5, line 19, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 5, remove lines 20 through 31.

Page 6, line 4, replace "6" with "3".

Page 7, line 26, after "state" insert "has not acted with gross negligence or".

Page 8, line 1, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 8, remove lines 2 through 13.

Page 8, after line 13, insert:

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



Year 2000 information requests – Use – Exceptions.

1. Any public entity may gather year 2000 processing information from any person relating to computer hardware or software, telecommunications networks or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made in any form to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and such a response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks or devices containing a computer processor.
3. In this section year 2000 processing includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using such separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.”

Renumber accordingly.

**DRAFT OF ENGROSSED HOUSE BILL NO. 1037 REMOVING HOUSE  
AMENDMENTS AND ADDING PROPOSED SENATE AMENDMENTS (GN)**

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

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

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

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

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

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

3. A political subdivision is not liable for any claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved is abused. Specifically, a political subdivision or a political subdivision employee is not liable for any claim that results from:
  - a. The decision to undertake or refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
  - b. The decision to undertake or refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order or other administrative approval or denial.
  - c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
  - d. The failure to provide or maintain sufficient personnel, equipment or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subdivision does not provide immunity for damages resulting from acts of gross negligence.
  - e. The failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the political subdivision has not acted with gross negligence or has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, a political subdivision is presumed to have made a good-faith effort to make the computer hardware or software,

telecommunications networks, or devices containing a computer processor compliant with the year 2000 date change if it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks, or devices containing a computer processor are compliant with the year 2000 date change if:

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

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

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

3. Neither the state or a state employee may be held liable under this chapter for any of the following claims:
  - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
  - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
  - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act,

- including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
- d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
  - e. A claim resulting from the assessment and collection of taxes.
  - f. A claim resulting from snow or ice conditions, water, or debris on a highway or public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
  - g. A claim resulting from any injury caused by a wild animal in its natural state.
  - h. A claim resulting from the condition of unimproved real property owned or leased by the state.
  - i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
  - j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
  - k. A claim resulting from damage to the property of a patient or inmate of a state institution.
  - l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
  - m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
  - n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
  - o. A claim for damage to property owned by the state.
  - p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by a state employee's personal insurance or by the vehicle rental company.
  - q. A claim resulting from the failure of any computer or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the

year 2000 date change if the state has not acted with gross negligence or has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications networks, or devices containing a computer processor compliant with the year 2000 date change if it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks, or devices containing a computer processor are compliant with the year 2000 date change if:

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

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

**Year 2000 information requests – Use – Exceptions.**

1. Any public entity may gather year 2000 processing information from any person relating to computer hardware or software, telecommunications networks or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made in any form to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and such a response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000

information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks or devices containing a computer processor.

3. In this section year 2000 processing includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using such separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.”

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

Page 1, line 1, after "chapter" delete "28-01.3 and a new section to".

Page 1, line 2, remove "chapter".

Page 1, line 3, after "equipment" remove "and to the liability".

Page 1, line 4, remove "of a manufacturer for a year 2000 claim" and "sections 28-01.3-04,".

Page 1, line 5, remove "28-01.3-06,".

Page 1, line 8, replace "and to the liability of a nonmanufacturing seller for a year 2000 claim and the" with "; and to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to year 2000 information requests.".

Page 1, remove line 9.

Page 1, remove lines 11 through 24.

Page 2, remove lines 1 through 30.

Page 3, remove lines 1 through 20.

Page 3, line 21, replace "4" with "1".

Page 4, line 2, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 4, remove lines 3 through 13.

Page 4, line 14, replace "5" with "2".



Page 5, line 19, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 5, remove lines 20 through 31.

Page 6, line 4, replace "6" with "3".

Page 8, line 1, replace "all of the following conditions are met:" with "it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 8, remove lines 2 through 13.

Page 8, after line 13, insert:

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

**Year 2000 information requests – Use – Exceptions.**

1. Any public entity may gather year 2000 processing information from any person relating to computer hardware or software.

telecommunications networks or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made in any form to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and such a response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract or for any other form of relief against the public entity or person.

2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks or devices containing a computer processor.
3. In this section year 2000 processing includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using such separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act."

Renumber accordingly.

**DRAFT OF ENGROSSED HOUSE BILL NO. 1037 REMOVING HOUSE  
AMENDMENTS AND ADDING PROPOSED SENATE AMENDMENTS**

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

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

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

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

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

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

3. A political subdivision is not liable for any claim based upon an act or omission of a political subdivision employee exercising due care in the execution of a valid or invalid statute or regulation or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved is abused. Specifically, a political subdivision or a political subdivision employee is not liable for any claim that results from:
  - a. The decision to undertake or refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
  - b. The decision to undertake or refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order or other administrative approval or denial.
  - c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
  - d. The failure to provide or maintain sufficient personnel, equipment or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this subdivision does not provide immunity for damages resulting from acts of gross negligence.
  - e. The failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the political subdivision has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, a political subdivision is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications networks, or devices containing a

computer processor compliant with the year 2000 date change if it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks, or devices containing a computer processor are compliant with the year 2000 date change if:

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

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

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

3. Neither the state or a state employee may be held liable under this chapter for any of the following claims:
  - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
  - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
  - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act,

including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.

- d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- e. A claim resulting from the assessment and collection of taxes.
- f. A claim resulting from snow or ice conditions, water, or debris on a highway or public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
- g. A claim resulting from any injury caused by a wild animal in its natural state.
- h. A claim resulting from the condition of unimproved real property owned or leased by the state.
- i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
- j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
- k. A claim resulting from damage to the property of a patient or inmate of a state institution.
- l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- o. A claim for damage to property owned by the state.
- p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by a state employee's personal insurance or by the vehicle rental company.
- q. A claim resulting from the failure of any computer or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the

year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications networks, or devices containing a computer processor compliant with the year 2000 date change if it has attempted compliance through independent testing or assurances sought or assurances received from manufacturers or suppliers. For the purposes of this subdivision, computer hardware or software, telecommunications networks, or devices containing a computer processor are compliant with the year 2000 date change if:

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

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

**Year 2000 information requests – Use – Exceptions.**

1. Any public entity may gather year 2000 processing information from any person relating to computer hardware or software, telecommunications networks or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made in any form to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and such a response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine

year 2000 compliance of its computer hardware or software, telecommunications networks or devices containing a computer processor.

3. In this section year 2000 processing includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using such separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act."



**Testimony by Jo Zschomler**  
**Director of the Risk Management Division of OMB**  
**House Bill 1037 – Government and Veterans Affairs Committee**  
**March 18, 1999**

Madam Chairman, members of the Senate Government and Veterans Affairs Committee, my name is Jo Zschomler. I am the Director of the Risk Management Division of OMB. I appear today in support of Engrossed House Bill 1037. However, I am requesting consideration of amendments to the proposed legislation. My comments are focused on the State's and political subdivisions' liability exposures for Year 2000 claims and lawsuits.

Tort claims are one of the Year 2000 exposures State agencies may face. Tort liability claims (such as negligence, products liability, or defamation) resulting from a Year 2000 issue would be administered by the Risk Management Division, and, if compensable, paid by the Risk Management Fund.

Contract claims (such as breach of contract) are another potential Year 2000 exposure for State agencies. If a vendor, contractor or another party sues claiming the State breached a contract by failing to deal with a Year 2000 problem, agencies would be required to defend that lawsuit and could be required to pay for certain losses the contracting party suffers.

Unfortunately, no one will know the extent of the Year 2000 consequences until after they occur. One reason for this is that use of embedded chips which may cause Y2K problems have become commonplace. Embedded chips exist in computers, automobiles, elevators, HVAC systems, etc. Prognosticators have gone so far as to estimate that lawsuits in the United States alone for Y2K claims will total \$1 trillion.

State agencies at the direction of the Governor and ISD are diligently working toward identifying and addressing Y2K compliance. Jim Heck, Director of the Information Services of OMB, is here today and will explain to you in more detail the proactive processes state agencies have accomplished and have targeted to complete prior to December 31, 1999. Mark Johnson will report on the counties' efforts and Connie Sprynczynatyk on the cities' efforts.

The first substantive amendment issue I would like to address is Y2K information requests. The language in Section 4 of the proposed amendments addresses Y2K

information provided at the request of local authorities. As you may be aware, the Federal Government passed *The Year 2000 Information and Readiness Disclosure Act* which was signed into law by President Clinton in October of 1998. That Act was designed to encourage businesses to voluntarily share information on the extent of their year 2000 strategies, solutions and tools with their contract partners, customers and the public at large.

In order to encourage the exchange of important Y2K readiness information, the Federal Act contains a provision that any statement made at the request of a Federal entity, agency, or authority is exempt from disclosure to third parties and not subject to use in any Federal or State legal action. In short, the federal legislation protects Y2K information requested by the **federal government**. Section 4 of the attached Amendment would provide similar protection for information provided at the request of the State or a political subdivision. This protection hopefully would further encourage voluntary interchange of Y2K readiness information.

House Bill 1037, as engrossed, provides the State, a political subdivision, or a manufacturer a conditioned immunity from liability for Y2K claims based on a defined good-faith effort. The amendments we propose define a good-faith effort as "determining compliance either through independent testing or assurances sought or received from manufacturers or suppliers." The amendments then define "compliance" as 1) stored dates or programs containing century recognition, 2) accommodating same century and multicentury formulas and date values, and 3) correctly dealing with the leap year issue.

As you will note, we propose revising the six numbered definitions of good-faith in Engrossed Bill 1037 with the three part definition of compliance I have discussed. Information technology specialists for the State and political subdivisions have advised us that the proposed language better defines compliance standards. For example, the original number 1 requires that the data structure provide four-digit date recognition. Four-digit recognition does not speak to Y2K. Four digit recognition could mean 0399 (March 1999). The original number 2 requires stored data to contain date century recognition. Some specialists are concerned that the practice of windowing, a program that facilitates compliance, cannot meet the requirements of number 2. The original number 5 requires showing four-digit years. Some reports produced by compliant programs do not "show" four-digit years even though the program accommodates the four-digit years. Specifying that *programs* contain century recognition and accommodate century formulas we feel better defines Y2k compliance.

The proposed amendments will also establish that the good-faith standard has been met when the public entity has sought or received compliance status for those

exposures they cannot identify or test (HVAC systems, utility failures, embedded chips, etc.).

By proposing this legislation we are not suggesting that state agencies or political subdivisions discontinue their present efforts to identify and address Year 2000 compliance issues. There would be no reason for them to do so. It is in their best interest to be Y2K compliant or they would not be able to perform their jobs. We are only requesting the maximum protection provided by law be afforded to them so they are not subjected to costs associated with lawsuits based on claims over which they have no control. We feel confident that a trier of fact will find that the State is acting in a prudent and reasonable manner in addressing its Y2K exposures thereby negating the probability of a favorable verdict against the State after a plaintiff has incurred litigation costs.

This concludes my prepared remarks.

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

Page 1, line 1, after "Act" insert "to provide for governmental year 2000 information requests and the use thereof;"

Page 1, replace line 24 with:

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

Page 2, remove lines 1 through 10.

Page 3, line 11, replace the third "in" delete with "an".

Page 3, after line 20, insert:

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

### **Year 2000 information requests – Use – Exceptions.**

1. Any public entity may gather year 2000 processing information from any person relating to computer hardware or software, telecommunications networks or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made in any form to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and such a response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine

year 2000 compliance of its computer hardware or software, telecommunications networks or devices containing a computer processor.

3. In this section year 2000 processing includes the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving date data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using such separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by public entity whether the response was received before or after the effective date of this Act."

Page 4, line 2, replace "all of the following conditions are met:" with "it has determined compliance either through independent testing or assurances sought or received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 4, remove lines 3 through 13.

Page 5, line 13, after "subdivision" insert "has not acted with gross negligence or".

Page 5, line 19, replace "all of the following" with "it has determined compliance either through independent testing or assurances sought or received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 5, remove lines 20 through 31

Page 7, line 26, after "state" insert "has not acted with gross negligence or".

Page 8, line 1, replace "all of the following" with "it has determined compliance either through independent testing or assurances sought or received from manufacturers or suppliers. For the purposes of this section, computer hardware or software, telecommunications networks or devices containing a computer processor are compliant with the year 2000 date change if:

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

Page 8, remove lines 2 through 13.

Renumber accordingly.

**TESTIMONY ON HB1037**  
**To the Senate Government and Veterans Affairs Committee**  
**By the Information Services Division**  
**Thursday, March 18, 1999**

*Jim Heck*

The Governor has designated the Information Services Division as the Year 2000 coordinating agency for state government. Our responsibility includes those services provided by the Information Services Division. We have checked the telephone systems supporting state government agencies in locations through out the state and they are complaint. We have checked the equipment and software used by the wide area data network and it is complaint. We are 95% complete in remediating and testing the mainframe computer programs. We expect to be done by the first quarter of this year. The Information Services Division is also responsible to monitor the Year 2000 progress of each agency. The Governor's letter in October asked each agency to designate a Y2K coordinator and submit a monthly progress report to our office, which is compiled into a statewide report. The report is posted on the states' Year 2000 web site. A copy of the February report and Agency Good Faith Compliance Letter is attached.

Attachment:

**State of North Dakota**  
**Year 2000 Progress Highlights**  
*Year 2000 Information and Readiness Act Disclosure*  
Reporting Period: February, 1999

---

**Agency Monthly Status Reports:**

- ◆ 60 agencies have submitted monthly status reports.
- ◆ To date, 10 agencies have completed their Y2K efforts and submitted Good Faith Compliance letters.
- ◆ To date, only 3 agencies (Water Commission, Independent Study, & School for the Deaf) have not submitted any status report.
- ◆ Boards & Commissions are not included in the reporting process.
- ◆ Status reports are posted on the State's Y2K web site.

**Conversion of mainframe application software is 97% complete.**

- ◆ Based on current estimates, the conversion of mainframe application software should be 100% complete before May 1<sup>st</sup>, 1999.

**Issues or Comments:**

- ◆ Beginning April 1<sup>st</sup>, a Y2K informational brochure entitled, "Keeping a Balanced Perspective on the Year 2000 Problem", will be distributed as an insert with Motor Vehicle license/registration renewals.
- ◆ On April 28<sup>th</sup> & 29<sup>th</sup> the Information Services and Risk Management Divisions will offer a workshop on the topic of "Contingency Planning". The workshop will be facilitated by a nationally recognized expert in the field of disaster/contingency planning and is offered at no charge to state agencies. The topic is a critical element in preparing for the Year 2000 and attendance is encouraged – contact the Risk Management Division for more information.
- ◆ The following pages recap the Year 2000 remediation progress of state agencies.



# Agency Year 2000 Status Report

Year 2000 Information and Readiness Act Disclosure

...sequenced by Agency Name

Monthly Status:  
February

| Agency | Contact                            | Percent of Phase Complete |   |             |            |           |       | Compliance Letter                   |
|--------|------------------------------------|---------------------------|---|-------------|------------|-----------|-------|-------------------------------------|
|        |                                    | Plan (on file)            | Assessment                                | Remediation | Validation | Implement |       |                                     |
| 5400   | Adjutant General / Civil Air Patro | Holly Gaugler             | 80 % <input type="checkbox"/>             | 100 %       | 100 %      | 80 %      | 80 %  | <input type="checkbox"/>            |
| 1400   | Administrative Hearings            | Frances Zuther            | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 100 %     | 95 %  | <input type="checkbox"/>            |
| 4120   | Aeronautics Commission             | Mark J. Holzer            | 60 % <input type="checkbox"/>             | 60 %        | 60 %       | 80 %      | 80 %  | <input type="checkbox"/>            |
| 6020   | Agriculture Department/Credit R    | Roberta Tjaden, Dat       | 80 % <input checked="" type="checkbox"/>  | 100 %       | 70 %       | 70 %      | 70 %  | <input type="checkbox"/>            |
| 6030   | American Dairy Association         | Louise Gallagher          | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 95 %      | 90 %  | <input type="checkbox"/>            |
| 1250   | Attorney General/Fire Marshall     | Cher Thomas               | 80 % <input type="checkbox"/>             | 75 %        | 45 %       | 35 %      | 30 %  | <input type="checkbox"/>            |
| 4710   | Bank of North Dakota               | Phyllis Lasher            | 100 % <input checked="" type="checkbox"/> | 100 %       | 100 %      | 90 %      | 90 %  | <input type="checkbox"/>            |
| 4130   | Banking and Financial              | Lori L. Laschkewitsc      | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 100 %     | 100 % | <input checked="" type="checkbox"/> |
| 1102   | Central Personnel                  | Darwin Heinitz            | 100 % <input checked="" type="checkbox"/> | 70 %        | 45 %       | 40 %      | 40 %  | <input type="checkbox"/>            |
| 1180   | Central Services                   | Leon Rauser               | 80 % <input type="checkbox"/>             | 100 %       | 100 %      | 90 %      | 90 %  | <input type="checkbox"/>            |
| 3240   | Children Services Coordinating     | Karla Mittleider          | 100 % <input checked="" type="checkbox"/> | 100 %       | 100 %      | 40 %      | 20 %  | <input type="checkbox"/>            |
| 5300   | Department of Corrections - Ad     | David Huhncke             | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 75 %      | 60 %  | <input type="checkbox"/>            |
| 8010   | Department of Transportation       | Heather J. Liberda        | 100 % <input checked="" type="checkbox"/> | 95 %        | 75 %       | 60 %      | 55 %  | <input type="checkbox"/>            |
| 6010   | Economic Dev & Fin/Ag. Product     | Connie Wagner             | 80 % <input type="checkbox"/>             | 100 %       | 100 %      | 90 %      | 65 %  | <input type="checkbox"/>            |
| 5120   | Emergency Management               | Larry Ruebel              | 100 % <input type="checkbox"/>            | 95 %        | 95 %       | 80 %      | 80 %  | <input type="checkbox"/>            |
| 1103   | Facilities Management              | Curt Zimmerman            | 40 % <input type="checkbox"/>             | 85 %        | 85 %       | 75 %      | 70 %  | <input type="checkbox"/>            |
| 7200   | Game and Fish                      | Randy Meissner            | 100 % <input checked="" type="checkbox"/> | 100 %       | 100 %      | 80 %      | 60 %  | <input type="checkbox"/>            |
| 3010   | Health Department                  | David Mayer               | 80 % <input type="checkbox"/>             | 80 %        | 80 %       | 75 %      | 75 %  | <input type="checkbox"/>            |
| 5040   | Highway Patrol                     | Carrie Oswald             | 80 % <input type="checkbox"/>             | 100 %       | 100 %      | 65 %      | 20 %  | <input type="checkbox"/>            |
| 7010   | Historical Society                 | Ronald Phil Warner        | 100 % <input checked="" type="checkbox"/> | 100 %       | 75 %       | 45 %      | 50 %  | <input type="checkbox"/>            |
| 4730   | Housing and Finance                | Franklin Kraft            | 80 % <input type="checkbox"/>             | 100 %       | 100 %      | 75 %      | 70 %  | <input type="checkbox"/>            |
| 3250   | Human Services                     | Ronda Deichert            | 100 % <input checked="" type="checkbox"/> | 100 %       | 95 %       | 35 %      | 35 %  | <input type="checkbox"/>            |
| 4050   | Industrial Commission - Adminis    | Shirley Campbell          | 100 % <input type="checkbox"/>            | 100 %       | 100 %      | 95 %      | 95 %  | <input checked="" type="checkbox"/> |
| 4052   | Industrial Commission - Geologi    | Tom Heck                  | 80 % <input checked="" type="checkbox"/>  | 100 %       | 100 %      | 100 %     | 95 %  | <input type="checkbox"/>            |
| 4051   | Industrial Commission - Oil and    | Jim Lindholm              | 100 % <input type="checkbox"/>            | 95 %        | 65 %       | 35 %      | 25 %  | <input type="checkbox"/>            |

| Agency                               | Contact              | Percent of Phase Complete                 |            |             |            |           |                                     | Compliance Letter |
|--------------------------------------|----------------------|---|------------|-------------|------------|-----------|-------------------------------------|-------------------|
|                                      |                      | Plan (on file)                            | Assessment | Remediation | Validation | Implement |                                     |                   |
| 1120 Information Services Division   | Larry Lee            | 100 % <input checked="" type="checkbox"/> | 100 %      | 90 %        | 45 %       | 40 %      | <input type="checkbox"/>            |                   |
| 4010 Insurance Department            | Laurie Scully        | 40 % <input type="checkbox"/>             | 75 %       | 65 %        | 55 %       | 55 %      | <input type="checkbox"/>            |                   |
| 1101 Intergovernmental Assistance    | Jim Boyd             | 100 % <input checked="" type="checkbox"/> | 100 %      | 100 %       | 90 %       | 90 %      | <input type="checkbox"/>            |                   |
| 3800 Job Service North Dakota        | Chuck Helm           | 100 % <input checked="" type="checkbox"/> | 90 %       | 90 %        | 85 %       | 85 %      | <input type="checkbox"/>            |                   |
| 4060 Labor Department                | Robyn Bosch          | 60 % <input type="checkbox"/>             | 95 %       | 80 %        | 60 %       | 20 %      | <input type="checkbox"/>            |                   |
| 2260 Land Department                 | James Luptak         | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 1600 Legislative Council             | Maryann Trauger      | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 4750 Mill and Elevator               | Greg McLean          | 100 % <input type="checkbox"/>            | 80 %       | 80 %        | 40 %       | 20 %      | <input type="checkbox"/>            |                   |
| 4720 Municipal Bond Bank             | DeAnn Ament          | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 95 %      | <input checked="" type="checkbox"/> |                   |
| 2150 ND University Systems           | Marty Hoag           | 100 % <input type="checkbox"/>            | 95 %       | 70 %        | 50 %       | 50 %      | <input type="checkbox"/>            |                   |
| 1100 Office of Management and Budg   | Dave Anderson        | 100 % <input checked="" type="checkbox"/> | 75 %       | 65 %        | 55 %       | 55 %      | <input type="checkbox"/>            |                   |
| 1010 Office of the Governor          | Kay A. Roth          | 100 % <input type="checkbox"/>            | 70 %       | 70 %        | 70 %       | 60 %      | <input type="checkbox"/>            |                   |
| 7500 Parks and Recreation            | Jeff Quast           | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 40 %       | 20 %      | <input type="checkbox"/>            |                   |
| 3600 Protection and Advocacy         | Corinne Hofmann      | 100 % <input checked="" type="checkbox"/> | 95 %       | 95 %        | 80 %       | 80 %      | <input type="checkbox"/>            |                   |
| 1920 Public Employees Retirement     | Sharon Schiermeister | 60 % <input type="checkbox"/>             | 80 %       | 75 %        | 80 %       | 60 %      | <input type="checkbox"/>            |                   |
| 2010 Public Instruction              | Duane Schell         | 80 % <input type="checkbox"/>             | 85 %       | 85 %        | 55 %       | 55 %      | <input type="checkbox"/>            |                   |
| 4080 Public Service Commission       | Steve Kahl           | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 85 %       | 85 %      | <input type="checkbox"/>            |                   |
| 1900 Retirement and Investment Offic | Gary Vetter          | 80 % <input type="checkbox"/>             | 85 %       | 85 %        | 65 %       | 55 %      | <input type="checkbox"/>            |                   |
| 1104 Risk Management                 | Janet Marquart       | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 5300 Roughrider Industries           | David Huhncke        | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 2530 School for the Blind            | Gary Bornsen         | 60 % <input type="checkbox"/>             | 90 %       | 95 %        | 95 %       | 90 %      | <input type="checkbox"/>            |                   |
| 1080 Secretary of State              | Bob Schaible         | 80 % <input type="checkbox"/>             | 80 %       | 80 %        | 75 %       | 80 %      | <input type="checkbox"/>            |                   |
| 4140 Securities Commission           | Diane Lillis         | 100 % <input checked="" type="checkbox"/> | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 1170 State Auditor                   | Donald LaFleur       | 100 % <input type="checkbox"/>            | 100 %      | 75 %        | 55 %       | 20 %      | <input type="checkbox"/>            |                   |
| 2560 State Electrical Board          | Bonnie Schmidt       | 60 % <input type="checkbox"/>             | 90 %       | 90 %        | 80 %       | 60 %      | <input type="checkbox"/>            |                   |
| 2500 State Library                   | Todd Bodvig          | 100 % <input type="checkbox"/>            | 100 %      | 100 %       | 100 %      | 100 %     | <input checked="" type="checkbox"/> |                   |
| 5060 State Radio                     | Rick Hessinger       | 60 % <input type="checkbox"/>             | 85 %       | 75 %        | 70 %       | 65 %      | <input type="checkbox"/>            |                   |

| <i>Agency</i>             | <i>Contact</i>     | <i>Percent of Phase Complete</i>          |                   |                    |                   |                  |       | <i>Compliance Letter</i>            |
|---------------------------|--------------------|---|-------------------|--------------------|-------------------|------------------|-------|-------------------------------------|
|                           |                    | <i>Plan (on file)</i>                     | <i>Assessment</i> | <i>Remediation</i> | <i>Validation</i> | <i>Implement</i> |       |                                     |
| 1200 State Treasurer      | Carol M. Siegert   | 100 % <input checked="" type="checkbox"/> | 100 %             | 100 %              | 100 %             | 100 %            | 100 % | <input type="checkbox"/>            |
| 1800 Supreme Court        | Kurt Schmidt       | 80 % <input type="checkbox"/>             | 60 %              | 25 %               | 25 %              | 25 %             | 25 %  | <input type="checkbox"/>            |
| 1270 Tax Department       | Becky Herrmann     | 100 % <input checked="" type="checkbox"/> | 85 %              | 80 %               | 40 %              | 20 %             | 20 %  | <input type="checkbox"/>            |
| 7400 Tourism Department   | Pat Hertz          | 100 % <input type="checkbox"/>            | 100 %             | 100 %              | 100 %             | 100 %            | 100 % | <input checked="" type="checkbox"/> |
| 3210 Veterans Affairs     | Cathy Halgunseth   | 60 % <input type="checkbox"/>             | 100 %             | 65 %               | 50 %              | 40 %             | 40 %  | <input type="checkbox"/>            |
| 3130 Veterans Home        | Jacie Grenier      | 80 % <input type="checkbox"/>             | 80 %              | 80 %               | 75 %              | 60 %             | 60 %  | <input type="checkbox"/>            |
| 6250 Wheat Commission     | Kathryn Michlitsch | 100 % <input type="checkbox"/>            | 95 %              | 95 %               | 95 %              | 95 %             | 95 %  | <input type="checkbox"/>            |
| 4850 Workers Compensation | Cathie Forsch      | 100 % <input checked="" type="checkbox"/> | 100 %             | 100 %              | 85 %              | 80 %             | 80 %  | <input type="checkbox"/>            |

**Total Agencies Reporting: 60**

# *Good Faith Compliance Letters received*

*Year 2000 Information and Readiness Act Disclosure*

| <i>Agency</i>                                      | <i>Date letter was received</i> |
|--|---------------------------------|
| 4130 Banking and Financial                         | 2/3/99                          |
| 4050 Industrial Commission - Administrative Office | 2/12/99                         |
| 2260 Land Department                               | 11/30/98                        |
| 1600 Legislative Council                           | 10/22/98                        |
| 4720 Municipal Bond Bank                           | 11/3/98                         |
| 1104 Risk Management                               | 11/6/98                         |
| 5300 Roughrider Industries                         | 1/11/99                         |
| 4140 Securities Commission                         | 1/14/99                         |
| 2500 State Library                                 | 12/3/98                         |
| 7400 Tourism Department                            | 12/31/98                        |

|                                       |           |
|---------------------------------------|-----------|
| <b><i>Total Letters Received:</i></b> | <b>10</b> |
|---------------------------------------|-----------|

## *Agencies not submitting a Status Report*

| <i>Agency</i>            | <i>Comments:</i> |
|--------------------------|------------------|
| 2011 Independent Study   |                  |
| 2520 School for the Deaf |                  |
| 7700 Water Commission    |                  |

|   |          |
|---|----------|
| <i>Total Agencies not submitting a status report:</i> | <b>3</b> |
|---|----------|

**Agency Good Faith Compliance Letter**  
Year 2000 Information and Readiness Act Disclosure

**Date:** \_\_\_\_\_

**TO:** Jim Heck, CIO  
Information Services Division

**FROM:** \_\_\_\_\_  
Agency Director

**RE:** Year 2000 Compliancy

The (agency) is aware of the issues regarding the Year 2000 compliance problem. Our agency has addressed this issue in good faith and certify that we are compliant in accordance with our agency Y2K compliance plan.

Our compliance is based on our evaluation, assessment, testing and correction of computer related systems, including mainframe, mid-range, and desktop hardware and software applications and data, as well as data interfaces into and out of the agency, and telecommunications systems, and non-IS systems such as mechanical and building control systems that were identified as systems to be tested and corrected. Due to budget and workforce restrictions some agency systems may have been determined not to be mission critical and were not included in the testing and correction phase of the agency's Y2K compliance plan.

In addition, contingency plans have been developed for all systems identified as "Mission Critical".

All our systems meet the state's standards of Year 2000 compliance, which is defined as:

- Data structures (databases, data files, etc.) provide 4-digit date century recognition. Example: "1996" provides date century recognition, "96" does not.
- Stored data contains date century recognition, including (but not limited to) data stored in databases and hardware/device internal system dates.
- Calculations and program logic accommodate both same century and multi-century formulas and data values. Calculations and logic include (but are not limited to) sort algorithms, calendar generations, event recognition, and all processing actions that use or produce data values.
- Interfaces (to and from other systems or organizations) prevent non-compliant dates and data from entering or exiting any state system.
- User interfaces – (i.e., screens, reports, etc.) accurately show 4-digit years (if critical to business functions).
- Year 2000 is correctly treated as a leap year within all calculation and calendar logic.

**TESTIMONY TO THE  
SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
Prepared March 18, 1999, by  
Mark A. Johnson, Executive Director  
North Dakota Association of Counties**

**ENGROSSED HOUSE BILL 1037**

Chairperson Krebsbach and members of the Committee, I am Mark Johnson, Executive Director of the North Dakota Association of Counties. I am here on behalf of the 53 counties and 600 elected county officials to express their support for Engrossed House Bill 1037.

As has been thoroughly explained, the liability exposures for all levels of government are largely unknown and impossible to quantify at this time. Due to the nature of many of the services delivered by counties, the risk of costly and time-consuming litigation is large. Counties individually, and jointly with State agencies, deliver a host of critical life-safety related services for the citizens of this State. Economic assistance through multiple public and private computer and communication systems; and radio dispatching and E-911 are two of the most obvious examples. Automated security systems for jails and juvenile detention centers are another area that can be noted. Although it is unlikely that property owners would sue if they did not receive a property tax statement, those other entities that rely on the revenue collected may feel otherwise. Clearly, counties and their citizens have a lot riding on these automated systems. This Association and our members recognize this fact, and numerous efforts have been made, and are being made, to address the issue of Y2K.

Our Association, in conjunction with the National Association of Counties, began saturating our counties with educational and informational material well over a year ago. This culminated with a major presentation and training session at our 1998 Annual Conference and Training Exposition. In preparation for this event, our Association asked the Interim Information Management Committee and the Legislative Council to allow us to expand the Legislature's contract with Intelliant, to include a Y2K assessment of two sample counties. Stutsman and Adams Counties were chosen and the results of their assessments were provided to all counties at our conference as one possible road map for those counties that had not yet initiated formal Y2K efforts. The joint delivery of so many social service programs has made the Y2K effort in this

area a state/county cooperative effort. The State has taken a strong lead in addressing the mainframe, processing, and communication issues, leaving the hardware and local productively software to the counties efforts. The Association of Counties has contracted its automation support staff to the majority of Registers of Deeds in order to address their concerns with respect to the UCC/CNS system they operate in conjunction with the Secretary of State. Similarly, NDACo has contracted with the Bureau of Criminal Investigation to assist those State's Attorneys that use the automated State's Attorneys Management System or SAMS.

Counties operating dispatch centers and E-911 systems are working with their vendors to ensure their systems and equipment are Y2K ready. Likewise, those county correctional facilities with automated security systems are coordinating their efforts with their suppliers and equipment vendors. User groups of the two primary property tax/accounting systems installed in more than 40 counties have been working with these software developers to ensure Y2K compliance. In all of these efforts, the State's Information Services Division has been an outstanding resource and a tremendous help.

It is obvious however, that the resources to address the Y2K issue are not as readily available to some counties as to others. The largest counties have possibly the greatest exposure, but also they have in-house automation support staff and generally better access to outside professionals. Our most rural counties have possibly more limited exposure to liability, but also fewer resources with which to address the issue.

Engrossed House Bill 1037 can give our local governments, and ultimately the property taxpayers that must fund any judgments, reasonable protection. Certainly not license to stop what their doing, or do less than they can, but to know that if they do what they can it will be recognized as that. County government strongly urges your support of this protection.





## *North Dakota League of Cities*

*House Bill 1037*

*Government and Veterans Affairs Committee*

**March 18, 1999**

**North Dakota League of Cities**

**Connie Sprynczynatyk, Executive Director**

Thank you for the opportunity to testify in support of this bill to provide immunity to the state and political subdivisions from liability claims related to Year 2000 computer problems. The League of Cities supports HB 1037 with further amendments.

North Dakota's cities are spending considerable time and effort to assess the functions that may be affected by this temporary computer date problem, to fix problems associated with mission-critical systems, to test the results and to develop contingency plans in the event of system failures on the suspected dates.

Among North Dakota's 361 incorporated cities, there are systems in every stage of assessment, repair or replacement, testing and contingency planning. The League of Cities has been creating an awareness and understanding of the problems, has offered resource information and has offered a free seminar designed to heighten awareness and understanding of the problems. We have encouraged our membership to take the necessary steps to assure life as usual after January 1, 2000.

The current focus of our educational efforts will be a special tabletop exercise at six meetings around the state. In April, we will team up with the ND Division of Emergency Management; the ND Insurance Reserve Fund; and representatives of local emergency management, health care and public safety workers to walk through the contingency planning process. The point of this special session is to give participants the tools they need to go home and test their community's readiness.

We support HB 1037 with further amendment because we believe this immunity for a temporary problem is important for local and state government. Despite everybody's best efforts to fix all of the problems, it is anyone's best guess at what will really happen. Better our cities should spend their resources doing everything they can to prevent problems instead of worrying about liability claims from problems no one can possibly predict.

Some have suggested that offering this protection for the state and local government sends the wrong signal—that we won't take the remedial actions if we believe we can "get by" without addressing this issue. I don't believe that's true. Cities are dynamic places where people live and play and do business. Commerce is an essential activity but it can't happen if the water and sewer systems fail, if traffic can't move, if emergency responders can't get to a fire or to someone who is suddenly ill. Life must go on, despite this date-change problem. Rather than girding for lawsuits, fixing the problem must be our focus.

Please adopt the amendments presented by NDIRF and the state's risk manager and recommend "do pass" to the full Senate.

**Testimony of Steven L. Spilde  
to the  
N.D. Senate Government and Veterans Affairs Committee  
Concerning Engrossed House Bill No. 1037  
March 18, 1999**

Madam Chairman and members of the Senate Government and Veterans Affairs Committee, my name is Steve Spilde and I am the Chief Executive Officer of the North Dakota Insurance Reserve Fund (NDIRF). I offer the following testimony in support of the proposed amendments to Engrossed House Bill No. 1037 suggested by the Director of OMB's Risk Management Division.

Particularly, the NDIRF supports amendments that establish a gross negligence standard and define a good-faith immunity for political subdivisions and the state from claims alleging damage due to failure of technology to accommodate the Year 2000 (Y2K) date change.

Political subdivisions have not beaten a path to the legislature seeking new immunities since abrogation of governmental immunity 25 years ago. The temporary but possibly serious nature of the Y2K problem, however, provides good reason for statutory relief in this case.

Although numerous experts have speculated, there is no agreement on what will be the extent of Y2K computer-related problems. In fact, there is a dramatic divergence of opinion, ranging from minor inconvenience to catastrophe. It is an event that is historically unique in that we're aware it's coming, and exactly when it's coming, but can't know what its effect will be.

The possibility of interruption of basic services due to Y2K-related computer equipment or program failure exists, even in the face of preparations to avoid it. Although efforts are being made, much of this problem is beyond the control of government and was not caused by political subdivisions or the state.

Having spent over a quarter-million dollars to revise and upgrade its own technology to Y2K compliance, the NDIRF is aware of what preparation can cost. As the liability coverage carrier for most political subdivisions in North Dakota, the NDIRF is also aware of the potential cost of defending claims alleging political subdivisions should have done more to prevent Y2K-related failures. This cost would ultimately be borne by taxpayers.

Scarce government resources are far better spent attempting to prevent or repair Y2K-related failures than defending lawsuits stemming from them. It's more important to fix the problem than to fix the blame. Amendments offered today by the Director of the Risk Management Division constitute a straightforward declaration of public policy to that end.

I would be pleased to answer any questions committee members may have.

**STATEMENT**  
**of the**  
**American Medical Association**  
**to the**  
**Special Committee on the Year 2000 Technology Problem**  
**United States Senate**

**Presented by**

**Donald J. Palmisano, MD, JD**  
**Member, AMA Board of Trustees**

**RE: IMPACT OF THE YEAR 2000 PROBLEM ON PHYSICIAN PRACTICES**

**July 23, 1998**

Mr. Chairman and members of the Committee, my name is Donald J. Palmisano, MD, JD. I am a member of the Board of Trustees of the American Medical Association (AMA), a Board of Directors member of the National Patient Safety Foundation (NPSF) and the Chair of the Development Committee for the same foundation. I also practice vascular and general surgery in New Orleans, Louisiana. On behalf of the three hundred thousand physician and medical student members of the AMA, I appreciate the chance to comment on the issue of the year 2000 problem and its anticipated effect on physicians.

Introduction

As all of us know, the year 2000 problem exists because a vast number of computer systems and software were created to read only the last two digits of the "year" field of date data, while the first two digits were implied to be "19." When data requires the

entry of a date in or after the year 2000, these systems and software will be incapable of processing the data properly.

Currently, virtually all industries are in some manner dependent on information technology, and the medical industry is no exception. As technology advances and its contributions mount, that dependency and our consequent vulnerability become more and more evident. The year 2000 problem is revealing to us that vulnerability.

By the nature of its work, the medical industry relies tremendously on technology – on computer systems, both hardware and software, as well as medical devices that have embedded microchips. Virtually every aspect of the medical profession depends in some way on these systems – for treating patients, handling administrative office functions, and conducting transactions. For some industries, software glitches or even system failures, can, at best, cause inconvenience, and at worst, can cripple the business. In medicine, those same software or systems malfunctions can, much more seriously, cause patient injuries and deaths.

#### Potential Impact on the Health Care Sector

The medical profession and the health care industry, in general, rely on information technology for a broad spectrum of services and products, from electronic data interchange for patient records, medical research, and billing, to medical devices in the surgical theater. Clinical operations, patient care, business operations, communications, and even building maintenance are all affected by this technology.

## Patient Care

Providing medical care frequently requires the ability to access, monitor, and interpret information. Some applications include imaging, laboratory, pharmacy, and respiratory devices, cardiology measurement and support devices, telemetry and endoscopy equipment and IV pumps, operating room equipment, and emergency room devices.

Nearly every piece of medical monitoring and regulating equipment relies in some way on information technology. Physicians and other health care providers must be able to rely implicitly on the medical equipment they use. Unreliable equipment cannot be used, because virtually any malfunction could have disastrous consequences.

Assessing the current level of risk attributable specifically to the year 2000 problem within the patient care setting remains problematic. We do know, however, that the risk is present and it is real. Consider for a minute what would occur if a monitor failed to sound an alarm when a patient's heart stopped beating. Or if a respirator delivered "unscheduled breaths" to a respirator-dependent patient. Or even if a digital display were to attribute the name of one patient to medical data from another patient. Are these scenarios hypothetical, based on conjecture? No. Software problems have caused each one of these medical devices to malfunction with potentially fatal consequences.<sup>1</sup> The potential danger is present.

The risk is also real. Since 1986, the FDA has received 450 reports identifying software defects—not related to the year 2000—in medical devices. Consider one instance – when

---

<sup>1</sup> Anthes, Gary H., "Killer Apps: People are Being Killed and Injured by Software and Embedded Systems." Computerworld, July 7, 1997.

software error caused a radiation machine to deliver excessive doses to six cancer patients; for three of them the software error was fatal.<sup>2</sup> We can anticipate that, left unresolved, medical device software malfunctions due to the millenium bug would be prevalent and could be serious.

Medical device manufacturers must immediately disclose to the public whether their products are Y2K compliant. Physicians and other health care providers do not have the expertise or resources to determine reliably whether the medical equipment they possess will function properly in the year 2000. Only the manufacturers have the necessary in-depth knowledge of the devices they have sold.

Nevertheless, medical device manufacturers have not always been willing to assist end-users in determining whether their products are year 2000 compliant. Earlier this year, FDA spokesperson Sharon Snider said that the agency has only received Y2K compliance information from about 11% of the 16,000 medical devices manufacturers worldwide. Even when vendors do respond, their responses have frequently not been helpful. The Department of Veterans Affairs recently reported that of more than 1,600 medical device manufacturers it has contacted in the past year, 233 manufacturers did not even reply and another 187 vendors said they were not responsible for alterations because they had merged, were purchased by another company, or were no longer in business. One hundred two companies reported a total of 673 models that are not compliant but

---

<sup>2</sup> *Id.*

should be repaired or updated this year.<sup>3</sup> As an aside, we applaud the federal government's initiative in seeking to obtain Y2K information from manufacturers.

### Administrative

Many physicians and medical centers are also increasingly relying on information systems for conducting medical transactions, such as communicating referrals and electronically transmitting prescriptions, as well as maintaining medical records. Many physician and medical center networks have even begun creating large clinical data repositories and master person indices to maintain, consolidate and manipulate clinical information, to increase efficiency and ultimately to improve patient care. If these information systems malfunction, critical data may be lost, or worse—unintentionally and incorrectly modified. Even an inability to access critical data when needed can seriously jeopardize patient safety.

Other administrative aspects of the Y2K problem involve Medicare coding and billing transactions. HCFA had issued instructions through its contractors to physicians and other health care professionals that until just last week would have required that electronic and paper claims must meet Y2K compliance criteria by October 1, 1998. We were particularly pleased that HCFA last week announced that it would provide all health care providers an additional three months (until January 1, 1999) to alter their claims processing data formats to accommodate the necessary eight digit birth date. Additional time will apparently be granted physicians by HCFA for reasonable good faith

---

<sup>3</sup> Morrissey, John, and Weissenstein, Eric, "What's Bugging Providers," Modern Healthcare, July 13, 1998, p. 14.



exceptions. Well in advance of the year 2000, both physicians and HCFA will need to make sure that their respective data processing systems are functioning properly to assure the orderly and timely processing of Medicare claims data.

Medicare administrative issues are of critical importance to patients, physicians, and other health care professionals. In one scenario that took place in my home state of Louisiana, Arkansas Blue Cross & Blue Shield, the Medicare claims processor for Louisiana, implemented a new computer system – intended to be Y2K compliant – to handle physicians' Medicare claims. Although physicians were warned in advance that the implementation might result in payment delays of a couple of weeks, implementation problems resulted in significantly longer delays. For many physicians, this became a real crisis. Physicians who were treating significant numbers of Medicare patients immediately felt significant financial pressure and had to scramble to cover payroll and purchase necessary supplies.<sup>4</sup>

We support and are encouraging physicians to address the myriad challenges the Y2K dilemma poses for their patients and their practices, which include claims submission requirements. We also believe that HCFA should lead by example and have its systems in compliance as quickly as possible to allow for adequate parallel testing with physician claims submission software and other health care professionals well in advance of the year 2000. Such testing would allow for further systems refinements, if necessary.

---

<sup>4</sup> "Year 2000 Bug Bites Doctors: Glitch Stymies Payments for Medicare Work." The Times-Picayune, June 6, 1998, page C1.

### Reimbursement and Implementation of BBA

To shore up its operations, HCFA has stated that it will concentrate on fixing its internal computers and systems. As a result, it has decided not to implement some changes required under the Balanced Budget Act (BBA) of 1997 and it plans to postpone physicians' payment updates from January 1, 2000, to about April 1, 2000.

In the AMA's view, the Y2K problem is and has been an identifiable and solvable problem. Society has known for many years that the date problem was coming and that individuals and institutions needed to take remedial steps to address the problem. There is no justification for creating a situation where physicians, hospitals and other providers now are being asked to pay for government's mistakes by accepting a delay in their year 2000 payment updates.

HCFA has indicated to the AMA that the delay in making the payment updates is not being done to save money for the Medicare Trust Funds. In addition, the agency has said that the eventual payment updates will be done in such a way as to fairly reimburse physicians for the payment update they should have received. In other words, the updates will be adjusted so that total expenditures in the year 2000 on physician services are no different than if the updates had occurred on January 1.

We are pleased that HCFA has indicated a willingness to work with us on this issue. But we have grave concerns about the agency's ability to devise a solution that is equitable and acceptable to all physicians.

Determining physician updates each year is complicated by the fact that physicians, unlike any other providers, are subject to an annual expenditure target or sustainable growth rate (SGR). Under the SGR, updates in future years are influenced by whether actual spending on physician services comes in over or under the target. Delaying the physician updates thus will influence physicians' ability to live within the targets and could affect future updates. If updates are postponed, HCFA therefore must consider the impact on the SGR to ensure that delays do not result in unintended penalties in years after 2000.

Also, as it turns out, the year 2000 is a critical year for physicians because several important BBA changes are supposed to be made in the resource-based relative value scale (RBRVS) that Medicare uses to determine physician payments. This relative value scale is comprised of three components: work, practice expense, and malpractice expense. Two of the three—practice expense and malpractice—are due to undergo Congressionally-mandated modifications in the year 2000.

In general, the practice expense changes will benefit primary care physicians at the expense of surgeons and other procedurally-oriented specialties. Malpractice changes, to some modest degree, would offset the practice expense redistributions. To now delay one or both of these changes will have different consequences for different medical specialties and could put HCFA at the eye of a storm that might have been avoided with proper preparation.

To make matters worse, we are also concerned that delays in Medicare's reimbursement updates could have consequences far beyond the Medicare program. Many private insurers and state Medicaid agencies base their fee-for-service payment systems on Medicare's RBRVS. Delays in reimbursement updates caused by HCFA may very well lead other non-Federal payers to follow Medicare's lead, resulting in a much broader than expected impact on physicians.

#### Current Level of Preparedness

Assessing the status of the year 2000 problem is difficult not only because the inventory of the information systems and equipment that will be affected is far from complete, but also because the consequences of noncompliance for each system remain unclear.

Nevertheless, if the studies are correct, malfunctions in noncompliant systems will occur and equipment failures can surely be anticipated. The analyses and surveys that have been conducted present a rather bleak picture for the health care industry in general, and physicians' practices in particular.

The GartnerGroup, for instance, based on its surveys and studies has concluded that the year 2000 problem's "effect on health care will be particularly traumatic... [l]ives and health will be at increased risk. Medical devices may cease to function."<sup>5</sup> In its report, it noted that most hospitals have a few thousand medical devices with microcontroller chips, and larger hospital networks and integrated delivery systems have tens of thousands of devices. Based on early testing, the GartnerGroup found that although only

---

<sup>5</sup> GartnerGroup, Kenneth A. Kleinberg, "Healthcare Worldwide Year 2000 Status," July 1998 Conference Presentation, p. 2 (hereinafter, GartnerGroup).

0.5 – 2.5 percent of medical devices have a year 2000 problem, approximately 5 percent of health care organizations will not locate all the noncompliant devices in time.<sup>6</sup> It also found that most of these organizations do not have the resources or the expertise to test these devices properly and will have to rely on the device manufacturers for assistance.<sup>7</sup>

As a general assessment, the GartnerGroup concluded that based on a survey of 15,000 companies in 87 countries, the health care industry remains far behind other industries in its exposure to the year 2000 problem.<sup>8</sup> Within the health care industry, the subgroups which are the furthest behind and therefore at the highest risk are “medical practices” and “in-home service providers.”<sup>9</sup> The GartnerGroup extrapolated that the costs associated with addressing the year 2000 problem for each practice group will be range up to \$1.5 million per group.<sup>10</sup>

#### Remediation Efforts – AMA’s Efforts

We believe that through a concerted and united effort, the Y2K problem can still be effectively addressed within the medical community before time runs out. For its part, the AMA has already begun devoting considerable resources to assist physicians and other health care providers in learning about and correcting the problem. The AMA has developed a national campaign entitled “Moving Medicine Into the New Millennium: Meeting the Year 2000 Challenge,” which incorporates a variety of educational seminars, promotional information, and ongoing communication activities designed to help

---

<sup>6</sup> *Id.* at p. 8.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at p. 10.

<sup>9</sup> *Id.* at p. 13.

physicians understand and address the numerous complex issues related to the Y2K problem.

One of the many seminar series the AMA will be sponsoring is the "Advanced Rapid Response Seminars" series. We will hold these seminars in various regions of the country and provide specific, case-study information along with practical recommendations for the participants. The seminars will also provide tips and recommendations on dealing with vendors and will assist participants in identifying important information they need to obtain from these vendors, as well as various methods for obtaining this information. We are also preparing a "Solutions Manual," which will be distributed to the participants of these sessions.

In addition, the AMA is opening a Web Site to provide the physician community additional assistance to better address the Y2K problem. The site will serve as a central communications clearinghouse, providing up-to-date information about the millenium bug, as well as a special interactive section that permits physicians to post questions and about recommended solutions for their specific Y2K problems.

On a related note, the AMA in early 1996 began forming the National Patient Safety Foundation or "NPSF." Our goal was to build a proactive initiative to prevent avoidable injuries to patient in the health care system. In developing the NPSF, the AMA realized that physicians, acting alone, cannot always assure complete patient safety. In fact, the entire community of providers is accountable to our patients, and we all have a

---

<sup>10</sup> *Id.*

responsibility to work together to fashion a systems approach to identifying and managing risk. It was this realization that prompted the AMA to launch the NPSF as a separate organization, which in turn partnered with other health care organizations, health care leaders, research experts and consumer groups from throughout the health care sector.

One of these partnerships is the National Patient Safety Partnership (NPSP), which is a voluntary public-private partnership dedicated to reducing preventable adverse medical events and convened by the Department of Veterans Affairs. Other NPSP members include the American Hospital Association, the Joint Commission on Accreditation of Healthcare Organizations, the American Nurses Association, the Association of American Medical Colleges, the Institute for Healthcare Improvement, and the National Patient Safety Foundation at the AMA. The NPSP has made a concerted effort to increase awareness of the year 2000 hazards that patients relying on certain medical devices could face at the turn of the century.

#### Others' Remediation Efforts

As an initial step, we recommend that the Congress work closely with the AMA and other health care leaders to develop a uniform definition of "compliant" with regard to medical equipment. There needs to be clear and specific requirements that must be met before vendors are allowed to use the word "compliant" in association with their products. Because there is no current standard definition, it may mean different things to different vendors, leaving physicians with confusing, incorrect, or no data at all.

Physicians should be able to spend their time caring for patients and not be required to spend their time trying to determine the year 2000 status of the numerous medical equipment vendors with whom they work.

We further suggest that both the public and private sectors encourage and facilitate health care practitioners in becoming more familiar with year 2000 issues and taking action to mitigate their risks. Greater efforts must be made in educating health care consumers about the issues concerning the year 2000, and how they can develop Y2K remediation plans, properly test their systems and devices, and accurately assess their exposure. We recognize and applaud the efforts of this Committee, the Congress, and the Administration in all of your efforts to draw attention to the Y2K problem and the medical community's concerns.

We also recommend that communities and institutions learn from other communities and institutions that have successfully and at least partially solved the problem. Federal, state and local agencies as well as accrediting bodies that routinely address public health issues and disaster preparedness are likely leaders in this area. At the physician level, this means that public health physicians, including those in the military, organized medical staff, and medical directors, will need to be actively involved for a number of reasons. State medical societies can help take a leadership role in coordinating such assessments.

We must also stress that medical device and software manufacturers need to publicly disclose year 2000 compliance information regarding products that are currently in use.



Any delay in communicating this information may further jeopardize practitioners' efforts at ensuring compliance. A strategy needs to be developed to effectively motivate all manufacturers to promptly provide compliance status reports. Additionally, all compliance information should be accurate, complete, sufficiently detailed and readily understandable to physicians. We suggest that the Congress and the federal government enlist the active participation of the FDA or other government agencies in mandating appropriate reporting procedures for vendors. We strongly praise the FDA for maintaining a Y2K web site on medical devices, which has already helped physicians to make initial assessments about their own equipment.

Although the AMA strongly believes that information must be freely shared between manufacturers and consumers, we strongly caution against providing liability caps to manufacturers in exchange for the Y2K information they may provide, for several reasons. First, as we have stated, generally vendors alone have the information about whether their products were manufactured to comply with year 2000 data. These manufacturers should disclose that information to their consumers without receiving an undue benefit from a liability cap. Second, manufacturers are not the only entities involved in providing medical device services, nor are they alone at risk if an untoward event occurs. When a product goes through the stream of commerce, several other parties may incur some responsibility for the proper functioning of that product, from equipment retailers to equipment maintenance companies. Each of these parties, including the end-user—the physician—will likely retain significant liability exposure if the device malfunctions because of a Y2K error. However, none of these parties will

typically have had sufficient knowledge about the product to have prevented the Y2K error, except the device manufacturer. To limit the manufacturer's liability exposure under these circumstances flies in the face of sound public policy.

We also have to build redundancies into the remediation efforts as part of the risk management process. Much attention has been focused on the vulnerability of medical devices to the Y2K bug, but the problem does not end there. Patient injuries can be caused as well by a hospital elevator that stops functioning properly. Or the failure of a heating/ventilation/air conditioning system. Or a power outage. The full panoply of systems that may break down as our perception of the scope of risk expands may not be as easily delineated as the potential problems with medical devices. Building in back-up systems as a failsafe for these unknown or more diffuse risks is, therefore, absolutely crucial.

As a final point, we need to determine a strategy to notify patients in a responsible and professional way. If it is determined that certain medical devices may have a problem about which patients need to be notified, this needs to be anticipated and planned.

Conversely, to the extent we can reassure patients that devices are compliant, this should be done. Registries for implantable devices or diagnosis- or procedure-coding databa may exist, for example, which could help identify patients who have received certain kinds of technologies that need to be upgraded and/or replaced or that are compliant. This information should be utilized as much as possible to help physicians identify patients and communicate with them.

## Conclusion

We appreciate the Committee's interest in addressing the problems posed by the year 2000, and particularly, those problems that relate to physicians. Because of the broad scope of the millenium problem and physicians' reliance on information technology, we realize that the medical community has significant exposure. The Y2K problem will affect patient care, practice administration, and Medicare/Medicaid reimbursement. The AMA, along with the Congress and other organizations, seeks to better educate the health care community about Y2K issues, and assist health care practitioners in remedying, or at least reducing the impact of, the problem. The public and private sectors must cooperate in these endeavors, while encouraging the dissemination of compliance information.

# ITAA's Year 2000 Home Page

**Site Navigation**

- [ITAA Home Page](#)
- [Year 2000 Page](#)
- [Y2K Activities](#)
- [Y2K Task Force](#)
- [Legal Advisory Group](#)
- [Y2K Legislation](#)
- [Certification Program](#)
- [Y2K Dispute Resolution](#)
- [Y2K Resources](#)
- [Vendor Directory](#)
- [Y2K Publications](#)
- [Y2K Calendar](#)
- [Y2K Clearinghouse](#)
- [Surveys](#)
- [Congressional Hearings](#)
- [Y2K Bookstore](#)
- [Y2K News](#)
- [Outlook Newsletter](#)
- [Press Releases](#)
- [Success Stories](#)
- [In The Spotlight](#)
- [Euro Conversion](#)
- [Euro Conversion](#)

Search the website:



Information Technology Association of America  
 1616 N. Ft. Myer Drive  
 Suite 1300  
 Arlington, VA 22209  
 (703) 522-5055  
 (703) 525-2279 (fax)

**Y2K State Legislation - Enacted**

| BILL/AUTHOR   | SUMMARY   |
|---|---|
| DATE<br>ENACTED   |   |
| <b>CALIFORNIA</b>   |   |
| <i>S.B. 1173</i><br><br><i>Senator John Vasconcellos (D)</i><br><br><i>Signed by Governor 9/24/98</i>                     | Provides immunity from liability for tort damages to any person or entity, including government entities, for injury resulting from the disclosure of information relating to the Year 2000 problem. Specifically includes persons who disclaim the universal application of provided solutions. Excludes persons from such protection who either knowingly provide solutions which are material and false, inaccurate or misleading. Does not apply to persons or entities that provide Year 2000 solutions for profit.  |
| <b>FLORIDA</b>  |   |
| <i>H.B. 3619</i><br><br><i>Representative Faye Culp (R)</i><br><br><i>Became Law without Governor's signature 5/30/98</i> | Protects state and local governments against legal actions that result from a Year 2000 computer date calculation failure. Includes in the immunity section any public or private university school of medicine supported in whole or in part by state funds under which the school's computer system, diagnostic or therapeutic equipment depend upon date logic, and are used to provide clinical patient care services to the public. Authorizes the governor to transfer resources, including personnel, between agencies and departments in the event of a computer failure caused by the year 2000 or if the governor believes a system may fail, with some exceptions. |
| <b>GEORGIA</b>  |   |
| <i>S.B. 638</i><br><br><i>Senator Sonny Perdue (D)</i><br><br><i>Signed by Governor 4/6/98</i>                            | Provides that a political subdivision of the state will have no liability for losses from any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times. This exemption applies: (1) if the failure causing the  |

Western Region Office  
 333 Ravenswood Ave.  
 Building AG104  
 Menlo Park, CA 94025  
 (650) 859-3469  
 (650) 859-3466 (fax)

Problems or questions  
 about the site? Contact  
 our webmaster.

|   |   |
|---|---|
|   | loss was unforeseeable; or (2) if the failure causing the loss was foreseeable, but the plan or design for identifying and preventing the failure was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design.   |
| <b>HAWAII</b>   |   |
| <b>S.B. 3043</b><br><br><i>Senator Norman Mizuguchi (D)</i><br><br><i>Signed by Governor 7/17/98</i>          | Establishes that the state and its political subdivisions are immune from lawsuits based on an error or failure that occurred prior to June 30, 1999, caused by a government computer system that is not Year 2000 compliant. Immunity does not apply to an individual who: (1) deliberately tampers with a government computer system for the purpose of preventing it from being Year 2000 compliant; or (2) receives and fails to immediately return a benefit to which he or she is not legally entitled arising out of any Year 2000 failure or error. |
| <b>NEVADA</b>   |   |
| <b>S.B. 180</b><br><br><i>Senate Finance Committee</i><br><br><i>Signed by Governor 7/3/97</i>                | Prohibits any cause of action "including, without limitation, any civil action or action for declaratory or injunctive relief" against an immune contractor, or an officer or employee of the state or its political subdivisions, based on a computer date error. This provision applies regardless of error's cause.  |
| <b>NORTH DAKOTA</b>   |   |
| <b>H.B. 1303</b><br><br><i>Rep. Cooper Garnos (R)</i><br><br><i>Signed by Governor William Janklow 3/3/99</i> | Establishes that no unit of local government or any political subdivision of the state and no employee of any unit of local government or political subdivision of the state is liable for losses from any failure or malfunction occurring on or before December 31, 2002.   |
| <b>H.B. 277</b>   | Provides immunity from any claim arising from the failure of a computer, software program, database, network, information system,   |

*Delegate Joe May (R)*

*Signed by Governor  
4/22/98*

firmware or any other device, whether operated by or on behalf of the Commonwealth of Virginia or one of its agencies, to interpret, produce, calculate, generate or account for a date which is compatible with the year 2000 date change. Stipulates that the provisions of the bill expire on July 1, 2003.

Rep. Klein

Thank you for asking us to review the proposed House amendments to Engrossed House Bill 1037. We do have two main concerns with the proposed amendments.

First, Section 1, paragraph 1, does not contain the language designating responses as exempt from the open records law and prohibiting their use in civil actions. This was the reason for requesting this provision. Without that language, the section serves no purpose.

The Senate amendments provided good faith immunity if we attempted compliance through independent testing, assurances sought, or assurances received. It also created a three part definition of compliance. The proposed House amendments provide good faith immunity if a three part definition of good faith is met. The proposed House amendments do not provide immunity if compliance was attempted through assurances sought or assurances received. It also does not provide a definition of compliance.

We feel the proposed House amendments would not provide the State or political subdivisions an opportunity for an adequate defense. It is unlikely we would be successful on a motion to dismiss or a motion for summary judgement because the proposed House amendments create factual issues not legal issues. Motions are usually granted if there are legal issues and no factual issues. As a result of the proposed House amendments, it is likely the government would spend a great deal of time, money and energy actually litigating these issues.

As you and I have discussed the assurances sought and assurances received provisions are necessary with regard to equipment, embedded systems, etc. – HVAC, elevators and other equipment we cannot test. By leaving this out, the proposed House amendments leave us bare.

Jo Zschomler

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

That the Senate recede from its amendments as printed on pages 1068-1070 of the House Journal and pages 911-913 of the Senate Journal and that Engrossed House Bill No. 1037 be amended as follows:

Page 1, line 1, after the first "to" insert "provide for year 2000 information requests; to"

Page 1, after line 10, insert:

**"SECTION 1. Year 2000 information requests - Use - Exceptions.**

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. A response to a year 2000 information request from a public entity is not admissible in evidence, in whole or in part, in any action or proceeding against the person who provided the response.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
3. For purposes of this section, year 2000 processing includes calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action or proceeding.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act."

Page 1, line 23, replace "all the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device meets the compliance requirements of this section, or if the manufacturer has sought and received a written assurance of compliance from the manufacturer of the computer hardware or software, telecommunications network, or device containing a computer processor. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:"



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

Page 1, remove line 24

Page 2, remove lines 1 through 10

Page 4, line 1, replace "networks" with "network" and replace "devices" with "device"

Page 4, line 2, replace "all of the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device meets the compliance requirements of this section, or if the state has sought and received a written assurance of compliance from the manufacturer of the computer hardware or software, telecommunications network, or device containing a computer processor. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:"

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

Page 4, remove lines 3 through 13

Page 5, line 18, replace "networks" with "network" and replace "devices" with "device"

Page 5, line 19, replace "all of the following" with "the results of testing establish that the computer hardware or software, telecommunications network, or device meets the compliance requirements of this section, or if the political subdivision has sought and received a written assurance of compliance from the manufacturer of the computer hardware or software, telecommunications network, or device containing a computer processor. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:"

- (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
- (2) The program logic accommodates same century and multcentury formulas and date values; and

RISK MGMT AMEND.  
HAND OUT

- (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic."

Page 5, remove lines 20 through 31

Page 7, line 31, replace "networks" with "network" and replace "devices" with "device"

Page 8, line 1, replace "all of the following" with "the results of testing establish that the computer hardware or software, telecommunications network, or device meets the compliance requirements of this section, or if the state has sought and received a written assurance of compliance from the manufacturer of the computer hardware or software, telecommunications network, or device containing a computer processor. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

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

Page 8, remove lines 2 through 13

Re-number accordingly

RISK MANAGEMENT 4/8 #1

Alternative Language to that identified as Page 1, line 23; Page 4, line 2; Page 5, line 19; and Page 8, line 1 of Representative Klemin's April 7 Proposed Amendments

Page 5, line 19, replace "all of the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:"

RISK MGMT # 2 4/8

**PROPOSED AMENDMENTS TO THE FIRST ENGROSSMENT WITH  
SENATE AMENDMENTS OF ENGROSSED HOUSE BILL NO. 1037**

Page 1, line 20, after "through" remove "independent"

Page 1, line 21, change the first "assurances" to "assurance" and replace "sought or assurances received from manufacturers or supplies" with "it has attempted to obtain or an assurance it has received from a manufacturer, supplier, government or other reliable source. Attempts to obtain assurance from a manufacturer, supplier, government, or other reliable source must be documented by the state."

Page 3, line 13, after "through" remove "independent"

Page 3, line 13, change the first "assurances" to "assurance" and replace "sought or assurances received from manufacturers or supplies" with "it has attempted to obtain or an assurance it has received from a manufacturer, supplier, government or other reliable source. Attempts to obtain assurance from a manufacturer, supplier, government, or other reliable source must be documented by the political subdivision."

Page 5, line 26, after "through" remove "independent"

Page 5, line 26, change the first "assurances" to "assurance" and replace "sought or assurances received from manufacturers or supplies" with "it has attempted to obtain or an assurance it has received from a manufacturer, supplier, government or other reliable source. Attempts to obtain assurance from a manufacturer, supplier, government, or other reliable sources must be documented by the state."

Renumber accordingly.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

That the Senate recede from its amendments as printed on pages 911-913 of the Senate Journal and pages 1068-1070 of the House Journal and that Engrossed House Bill No. 1037 be amended as follows:

Page 1, line 1, after the first "to" insert "provide for year 2000 information requests; to"

Page 1, after line 10, insert:

**"SECTION 1. Year 2000 information requests - Use - Exceptions.**

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
3. For purposes of this section, year 2000 processing includes calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action or proceeding.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act."

Page 1, replace line 24 with:

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

Page 2, remove lines 1 through 10

Page 4, replace lines 3 through 13 with:

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

Page 5, replace lines 21 through 31 with:

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

Page 8, replace lines 3 through 13 with:

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

Renumber accordingly

# Memorandum

*To: Representative Klein  
Representative Metcalf  
Senator Wayne Stenehjem  
Senator DeMers  
Senator Wardner  
✓ Jim McWilliams, House GVA Clerk*

*From: Representative Klemin*

*Date: Tuesday, April 6, 1999*

*Subject: HB 1037 Y2K Information Requests*

I still have a problem with the language in the Senate amendments to HB 1037 regarding Y2K information requests contained in Section 4. Attached is a brief hypothetical fact situation which describes the problem. If a public entity knows about a Y2K problem as a result of a "reponse" to a "year 2000 request" and does nothing about it and someone is harmed, we should not condone the official cover up of that knowledge in the name of protecting a culpable party from liability. Please review this further. The federal law on the admissibility of Y2K statements should be enough.

Prepared by Representative Klemin  
April 6, 1999

COMMENT ON SENATE AMENDMENT TO HB1037 RE: SECTION 4 - YEAR 2000  
INFORMATION REQUESTS

Assume the following facts:

A public entity (city, county, state agency or other political subdivision) makes an information request to any person which relates to "computer hardware or software, telecommunications networks, or devices containing a computer processor" and the response to the information request indicates that there *is* a Y2K problem.

Assume further that the public entity does not make an effort to correct the Y2K problem that it knows exists.

Assume alternatively that the "person" also makes no effort to resolve the Y2K problem that the person may be responsible for creating.

Assume further that as a result of not correcting the Y2K problem that the public entity (and the person) knew about, that someone is injured, damaged or otherwise harmed (perhaps killed) as a result of the failure of the public entity (or person) to correct the problem.

Section 4 subsection 1 of the Senate amendments would protect the public entity and the person from disclosing *knowledge* about the Y2K problem and the subsequent failure to correct a Y2K problem known to them. This subsection provides in part:

**"Any year 2000 processing response made to an information gathering request from a public entity is not a public record . . . and the response may not be directly or indirectly used, **offered in evidence**, or be **subject to discovery** in any civil action for damages for tort, contract, or for any other form of relief **against the public entity or person.**"**

The blanket nondisclosure protection is not obviated by subsection 4. The response by the person to the public entity about the Y2K problem cannot be discovered from *either* the public entity *or* the person who provided the response as a result of subsection 1 and cannot be used in *any* civil action. Subsection 4 would allow an injured party to introduce evidence of defect obtained by other means, but the direct knowledge of defect by the liable party as a result of the year 2000 response is not discoverable or admissible into evidence.



\* STENEHOEM  
MOVED

Includes Manufacturers and Suppliers

AMEND 1

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

\* That the Senate recede from its amendments as printed on pages 1068-1070 of the House Journal and pages 911-913 of the Senate Journal and that Engrossed House Bill No. 1037 be amended as follows:

Page 1, line 1, after the first "to" insert "provide for year 2000 information requests; to"

Page 1, after line 10, insert:

"**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

### Year 2000 information requests - Use - Exceptions.

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications network, or device containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications network, or device containing a computer processor.
3. In this section, year 2000 processing includes the calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.

6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.

Page 1, line 23, replace “all of the following conditions are met:” with “the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the manufacturer has sought and received an assurance of compliance from the original manufacturer or supplier, or if the manufacturer has sought an assurance of compliance from the original manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the original manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:”

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

Page 1, remove line 24

Page 2, remove lines 1 through 10

Page 4, line 1, replace “networks” with “network” and replace “devices” with “device”

Page 4, line 2, replace “all of the following conditions are met:” with “the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:”

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

Page 4, remove lines 3 through 13

Page 5, line 18, replace “networks” with “network” and replace “devices” with “device”

Page 5, line 19, replace “all of the following conditions are met:” with “the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:”

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

Page 5, remove lines 20 through 31

Page 7, line 31, replace “networks” with “network” and replace “devices” with “device”

Page 8, line 1, replace “all of the following conditions are met:” with “the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications”

network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:"

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

Page 8, removes lines 2 through 13

Renumber accordingly.

Revised by Rep. Klemin

Excludes Manufacturers and Suppliers

\* 4-8-98 5:45 pm

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1037

That the Senate recede from its amendments as printed on pages 1068-1070 of the House Journal and pages 911-913 of the Senate Journal and that Engrossed House Bill No. 1037 be amended as follows:

Page 1, line 1, after the first "to" insert "provide for year 2000 information requests; to"

Page 1, line 1, after the word "enact" delete "a new section to chapter 28-01.3 and"

Page 1, line 3, delete "and to the liability"

Page 1, line 4, delete "of a manufacturer for a year 2000 claim"

Page 1, line 4, after the word "reenact" delete "sections 28-01.3-04,"

Page 1, line 5, delete "28-01.3-06,"

Page 1, line 8, delete "and to the liability of a nonmanufacturing seller for a year 2000 claim and the"

Page 1, line 9, delete "determination of a defective product"

Page 1, after line 10, insert:

"**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

### Year 2000 information requests - Use - Exceptions.

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications network, or device containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer

hardware or software, telecommunications network, or device containing a computer processor.

3. In this section, year 2000 processing includes the calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 20

Page 4, line 1, replace "networks" with "network" and replace "devices" with "device"

Page 4, line 2, replace "all of the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, ~~or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier~~ of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance <sup>obtained</sup> with the year 2000 date change if:"

1. All stored dates or programs contain century recognition including dates stored in data bases and hardware or internal system dates in devices;

2. The program logic accommodates same century and multicentury formulas and date values; and
3. The year 2000 or any other leap year is correctly treated as a leap year within all program logic."

Page 4, remove lines 3 through 13

Page 5, line 18, replace "networks" with "network" and replace "devices" with "device"

Page 5, line 19, replace "all of the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:"

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

Page 5, remove lines 20 through 31

Page 7, line 31, replace "networks" with "network" and replace "devices" with "device"

Page 8, line 1, replace "all of the following conditions are met:" with "the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:"

*state or federal*

*obtained*

*obtained*

*federal*

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

Page 8, removes lines 2 through 13

Renumber accordingly.



90165.0300  
Fifty-sixth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1037**

Introduced by

Legislative Council

(Information Technology Committee)

A BILL for an Act to provide for year 2000 information requests; to create and enact a new section to chapter 28-01.3 and a new section to chapter 32-12 of the North Dakota Century Code, relating to the liability of the state for a contract claim resulting from the failure of computers or computer equipment and to the liability of a manufacturer for a year 2000 claim; and to amend and reenact sections 28-01.3-04, 28-01.3-06, subsection 3 of section 32-12.1-03, and subsection 3 of section 32-12.2-02 of the North Dakota Century Code, relating to the liability of political subdivisions and the state for a claim resulting from the failure of computers or computer equipment as a result of the year 2000 date change and to the liability of a nonmanufacturing seller for a year 2000 claim and the determination of a defective product.

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

**SECTION 1.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

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

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications network, or device containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and the response may not be directly or indirectly

- used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications network, or device containing a computer processor.
  3. In this section, year 2000 processing includes the calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
  4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action.
  5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.
  6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.

**SECTION 2.** A new section to chapter 28-01.3 of the North Dakota Century Code is created and enacted as follows:

**Claims resulting from year 2000 date change computer failures prohibited.** Except to the extent liability is expressly assumed under warranty or contract, a manufacturer is not liable for a claim that is the result of the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if

the manufacturer has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this section, a manufacturer is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the manufacturer has sought and received an assurance of compliance from the original manufacturer or supplier, or if the manufacturer has sought an assurance of compliance from the original manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the original manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

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

**SECTION 3. AMENDMENT.** Section 28-01.3-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**28-01.3-04. Liability of nonmanufacturing sellers.**

1. In any products liability action or an action involving a year 2000 claim maintained against a seller of a product who did not manufacture the product, the seller shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.
2. After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court

shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:

- a. That the certifying seller exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.
- b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.
- c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.

3. In an action involving a year 2000 claim, a certifying seller who is not dismissed is entitled to the same presumption of a good-faith effort as a manufacturer.

~~3.~~ 4. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying seller if the plaintiff can show any of the following:

- a. That the applicable statute of limitation bars a product liability action against the manufacturer of the product allegedly causing the injury, death, or damage.
- b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.

5. In the event a certifying seller is reinstated in an action involving a year 2000 claim, a certifying seller is entitled to the same presumption of a good-faith effort as a manufacturer and subject to the same conditions as a manufacturer.

**SECTION 4. AMENDMENT.** Section 28-01.3-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**28-01.3-06. Determination of defective product.** No product may be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer. This section does not apply to a product involved in a year 2000 claim.

**SECTION 5.** A new section to chapter 32-12 of the North Dakota Century Code is

created and enacted as follows:

**Claims resulting from year 2000 date change computer failures prohibited.** The state is not liable for a claim arising upon contract which is the result of the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this section, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:

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

**SECTION 6. AMENDMENT.** Subsection 3 of section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A political subdivision is not liable for any claim based upon an act or omission of ~~an~~ a political subdivision employee of a ~~political subdivision~~, exercising due care, in the execution of a valid or invalid statute or regulation; ~~whether or not such~~

~~statute or regulation be valid~~, or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved ~~be~~ is abused. Specifically, a political subdivision or ~~an~~ a political subdivision employee ~~thereof~~ is not liable for any claim that results from:

- a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.
- b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion ~~be~~ is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
- d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this ~~subsection~~ subdivision does not provide immunity for damages resulting from acts of gross negligence.
- e. The failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the political subdivision has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, a political subdivision is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications networks, or devices containing a computer

processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:

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

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

**SECTION 7. AMENDMENT.** Subsection 3 of section 32-12.2-02 of the 1997

Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:
  - a. A claim based upon an act or omission of a state employee exercising due

- care in the execution of a valid or invalid statute or rule.
- b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
  - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
  - d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
  - e. A claim resulting from the assessment and collection of taxes.
  - f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
  - g. A claim resulting from any injury caused by a wild animal in its natural state.
  - h. A claim resulting from the condition of unimproved real property owned or leased by the state.
  - i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
  - j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.
  - k. A claim resulting from damage to the property of a patient or inmate of a



state institution.

- l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- o. A claim for damage to property owned by the state.
- p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.
- q. A claim resulting from the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance standard of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the

computer hardware or software, telecommunications network or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliance with the year 2000 date change if:

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