

Introduced by

Representatives Mock, Bosch, Lefor, Roers Jones, Toman, Vigesaa, Weisz

Senators Davison, Piepkorn, Wanzek

1 A BILL for an Act to amend and reenact section 32-12.2-15 of the North Dakota Century Code,  
2 relating to contracts limiting liability to the state; and to declare an emergency.

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

4 **SECTION 1. AMENDMENT.** Section 32-12.2-15 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **32-12.2-15. Contracts limiting liability to the state.**

- 7 1. Notwithstanding any provision in this chapter to the contrary, an agency may agree to
- 8 limit the liability of a contractor to the state if the agency determines such services or
- 9 products cannot be effectively obtained without such limitation and the limitation does
- 10 not pose any significant risk of loss to the state and is in the best interests of the state.
- 11 The agency, in consultation with the office of management and budget and the
- 12 attorney general's office, shall prepare a written documentation before agreeing to any
- 13 liability limitation. An agency's authority to agree to a limitation of liability is limited to
- 14 contracts for the purchase or lease of, or services related to, software, communication,
- 15 or electronic equipment, and economic forecasting and ~~may only limit the agency's.~~
- 16 2. An agency may limit its ability to recover indirect consequential damages.
- 17 3. If the extent of potential direct loss is unknown, an agency may agree to limit direct
- 18 damages to a reasonably estimated amount commensurate with the foreseeable risk
- 19 of loss to the state. The amount must be equal to twice the total value of the contract,
- 20 unless all parties to the contract agree to an alternative amount. Any agreed upon
- 21 amount that is less than twice the value of the contract must be approved by the
- 22 director of the office of management and budget. The liquidated damages and
- 23 retainage provisions for delay, missed deadlines, and other breaches are not subject
- 24 to a general limitation on direct or indirect damages authorized under this section.

1       4. A contract under this section may not limit any direct loss to the state resulting from  
2           fraud or other intentional or willful misconduct, breach of confidentiality obligations, or  
3           loss resulting from tangible property damage or personal injury.

4       **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.