

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1130

Short Title: Limit Y2K Liability.

(Public)

Sponsors: Representatives Tolson; Cansler and Hurley.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE NORTH CAROLINA TORT CLAIMS ACT TO PROVIDE
2 IMMUNITY FROM LIABILITY FOR TORT DAMAGES BASED ON CERTAIN
3 COMPUTER FAILURES, TO PROTECT THE STATE FROM BREACHING
4 CONTRACTS DUE TO CERTAIN COMPUTER FAILURES, AND TO PROTECT
5 STATE AND LOCAL GOVERNMENT EMPLOYEES FROM PERSONAL
6 LIABILITY DUE TO CERTAIN COMPUTER FAILURES.
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8 The General Assembly of North Carolina enacts:

9 Section 1. Article 31 of Chapter 143 of the General Statutes is amended by
10 adding a new section to read:

11 "**§ 143-299.4. Exclusion from liability.**

12 (a) Notwithstanding any other law, the State shall not be presumed to have waived
13 its sovereign immunity from any claim arising from the failure of a computer, software
14 program, database, network, information system, firmware, or any other device operated
15 by or on behalf of a State agency to interpret, produce, calculate, generate, or account for
16 a date which is compatible with the 'Year 2000' date change."

17 Section 2. Article 31A of Chapter 143 of the General Statutes is amended by
18 adding a new section to read:

19 "**§ 143-300.12. Protection from liability.**

1 (a) No employee of the State shall be held liable for any claim arising from or
2 relating to the failure of a computer, software program, database, network, information
3 system, firmware, or any other device, operated by or on behalf of the governmental
4 employee in the discharge of the employee's official responsibilities to interpret, produce,
5 calculate, generate or, account for a date which is compatible with the 'Year 2000' date
6 change. The immunity conferred by this section shall not apply if the act or omission at
7 issue was the result of gross negligence or willful misconduct of the employee.

8 (b) The limit on liability set forth in subsection (a) of this section shall also apply
9 to any employee of any political subdivision, agency, or instrumentality of the State."

10 Section 3. Article 8 of Chapter 143 of the General Statutes is amended by
11 adding the following sections to read:

12 **"§ 143-133.1. Limitation on breach of contract.**

13 (a) Failure by the State, or any of its political subdivisions, to perform under any
14 contract on the basis of the failure of a computer, software program, database, network,
15 information system, firmware, or any other device, operated by or on behalf of the State
16 or political subdivision to interpret, produce, calculate, generate, or account for a date
17 which is compatible with the 'Year 2000' date change, shall not constitute a breach of
18 contract by the State or political subdivision, and the State or political subdivision shall
19 not be liable under contract for any damages resulting from the failure.

20 (b) Beginning May 1, 1999, any contract entered into by or on behalf of and in the
21 capacity of the State of North Carolina or any of its political subdivisions shall include a
22 provision that provides immunity to the State or political subdivision for any breach of
23 contract that is caused by an incorrect date being produced, calculated, or generated by a
24 computer or other information system that is owned or operated by the State or political
25 subdivision, regardless of the cause of the error.

26 (c) Any contract subject to the provisions of this section that is entered into on or
27 after May 1, 1999, has the legal effect of including the immunity required by this section,
28 and any provision of the contract which is in conflict with this section is void.

29 **"§ 143-133.2. Court-ordered mediation of certain contract disputes.**

30 Whenever it appears to the court, from the pleadings or otherwise, that a civil action
31 involves a contested issue as to whether the liability of the State or any political
32 subdivision is subject to limitation under G.S. 143-133.1, the matter shall be set for
33 mediation, and the parties and their representatives shall be required to attend a pretrial
34 mediated settlement conference conducted pursuant to G.S. 7A-38.1 and pursuant to rules
35 of the Supreme Court adopted to implement G.S. 7A-38.1. For good cause, on the
36 motion of either party or on the court's own motion, the court may waive the mandatory
37 setting of a matter for mediation. Good cause may include, but is not limited to, a
38 showing of undue hardship to a party or an agreement between the parties for voluntary
39 mediation, subject to court approval."

40 Section 4. This act is effective when it becomes law and shall expire on
41 January 1, 2006. The act applies to contracts in force on or after the effective date.