

CS FOR HOUSE BILL NO. 57(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/13/99

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to immunity for certain claims against the state or a
2 municipality, or agents, officers, or employees of either, arising out of or in
3 connection with the year 2000 date change; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1. FINDINGS AND INTENT.** (a) The legislature finds that

6 (1) for decades, business and government computer programmers around the
7 world generally saved expensive data storage space and data entry time by storing the year
8 as two digits instead of four; for example, 1900 would likely have been entered as 00;

9 (2) as a result of the storing practice, many mainframe and personal computers,
10 software of all kinds, and traffic control, medical, and other equipment that has a
11 microprocessor interpret "00" as the year 1900 rather than the year 2000, and many of these
12 systems may fail or cause errors for years beyond 1999;

13 (3) the year 2000 date change creates an unparalleled challenge to state and
14 municipal government operations, and its effect is imminent, affecting some electronic

1 computing devices well before December 31, 1999;

2 (4) exhaustive state preventative efforts in accordance with the governor's
3 directives are presently underway to identify, test, and develop contingency plans for state
4 government operations, prioritizing first for mission-critical systems, to provide uninterrupted
5 public services;

6 (5) even with the best efforts using the appropriations and personnel resources
7 available to state and municipal governments and with due diligence, the magnitude and the
8 depth of systems affected by the year 2000 date change throughout state and local government
9 operations likely make it impossible to foresee and prevent all failures due to the date change;

10 (6) extensive civil actions based on year 2000 date change failures are
11 anticipated in many areas of general commerce and industry; and

12 (7) it is in the public interest that the state apply its limited resources to
13 remediation efforts related to this important year 2000 date change rather than to the costs of
14 litigation.

15 (b) It is the intent of this Act

16 (1) to recognize that it is a complex and difficult challenge to prepare state and
17 municipal government agency-owned, operated, and inspected electronic devices for the year
18 2000;

19 (2) to acknowledge that due diligence by state and municipal government is
20 being used to provide uninterrupted public services to the people of Alaska;

21 (3) to appreciate that even the due diligence described in (2) of this subsection
22 may not suffice to prevent system failures of those public services;

23 (4) to ensure that a person's right to receive mandated services or entitlements
24 authorized under state law or municipal ordinance is not interpreted to be interfered with by
25 this Act; and

26 (5) not to prevent a person from seeking recourse through existing
27 administrative procedure provided by state law or municipal ordinance to obtain services or
28 entitlements even though this Act precludes the award of compensation for consequences of
29 a failure described in this Act.

30 * **Sec. 2.** AS 09.50 is amended by adding a new section to read:

31 **Sec. 09.50.255. Immunity for claims against the state arising out of or in**

1 **connection with the year 2000 date change.** (a) Notwithstanding any contrary
2 provisions of AS 09.50.250, an action in connection with the year 2000 date change
3 may not be brought against the state, or against an agent, officer, or employee of the
4 state for an act or omission occurring in the scope of that person's employment or
5 work for the state, (1) for damages caused directly or indirectly by a failure of an
6 electronic computing device owned, controlled, or operated by the state, or (2) arising
7 out of an inspection or review of an electronic computing device owned, controlled,
8 or operated by others. The immunity described in this subsection does not apply if the
9 affected party shows by clear and convincing evidence that the state did not use good
10 faith efforts to avoid the failure that caused the damages claimed in the civil action.
11 For purposes of this subsection, the state used good faith efforts as a matter of law if
12 the state made efforts to identify, test, and develop contingency plans for critical
13 systems.

14 (b) This section does not affect immunity provided to the state under another
15 provision of law.

16 (c) In this section,

17 (1) "electronic computing device" includes computer hardware or
18 software, a computer chip, an embedded chip, process control equipment, or other
19 information system that is used to capture, store, manipulate, or process data, or that
20 controls, monitors, or assists in the operation of a physical apparatus that is not
21 primarily used as a computer but that relies on automation or digital technology to
22 function;

23 (2) "physical apparatus that is not primarily used as a computer"
24 includes a vehicle, a vessel, a building, a structure, a facility, an elevator, medical
25 equipment, a traffic signal, machinery, access controls, and similar types of items;

26 (3) "state" includes a department, institution, board, commission,
27 division, authority, public corporation, council, committee, or other instrumentality of
28 the state, including the University of Alaska;

29 (4) "year 2000 date change" includes processing date or time data from,
30 into, and between calendar year 1999 and calendar year 2000, and leap-year
31 calculations; in this paragraph, "processing" includes calculating, comparing,

1 sequencing, displaying, and storing.

2 * **Sec. 3.** AS 09.65.070(d) is amended to read:

3 (d) An action for damages may not be brought against a municipality or any
4 of its agents, officers, or employees if the claim

5 (1) is based on a failure of the municipality, or its agents, officers, or
6 employees, when the municipality is neither owner nor lessee of the property involved,

7 (A) to inspect property for a violation of any statute, regulation,
8 or ordinance, or a hazard to health or safety;

9 (B) to discover a violation of any statute, regulation, or
10 ordinance, or a hazard to health or safety if an inspection of property is made;
11 or

12 (C) to abate a violation of any statute, regulation, or ordinance,
13 or a hazard to health or safety discovered on property inspected;

14 (2) is based on [UPON] the exercise or performance or the failure to
15 exercise or perform a discretionary function or duty by a municipality, or its agents,
16 officers, or employees, whether or not the discretion involved is abused;

17 (3) is based on [UPON] the grant, issuance, refusal, suspension, delay,
18 or denial of a license, permit, appeal, approval, exception, variance, or other
19 entitlement, or a rezoning;

20 (4) is based on the exercise or performance during the course of
21 gratuitous extension of municipal services on an extraterritorial basis;

22 (5) is based on [UPON] the exercise or performance of a duty or
23 function upon the request of, or by the terms of an agreement or contract with, the
24 state to meet emergency public safety requirements; [OR]

25 (6) is based on the exercise or performance of a duty in connection
26 with an enhanced 911 emergency system and is not based on an intentional act of
27 misconduct or on an act of gross negligence; or

28 (7) is caused directly or indirectly by a failure, in connection with
29 the year 2000 date change, of an electronic computing device owned, controlled,
30 or operated by the municipality, or by an agent, officer, or employee of the
31 municipality and occurring in the scope of that person's employment or work for

1 the municipality; the immunity described in this paragraph does not apply if the
2 affected party shows by clear and convincing evidence that the municipality did
3 not use good faith efforts to avoid the failure that caused the damages claimed in
4 the civil action; for purposes of this paragraph, the municipality used good faith
5 efforts as a matter of law if the municipality made efforts to identify, test, and
6 develop contingency plans for critical systems; this paragraph does not affect
7 immunity provided to a municipality under another provision of law.

8 * **Sec. 4.** AS 09.65.070(e) is amended by adding new paragraphs to read:

9 (3) "electronic computing device" includes computer hardware or
10 software, a computer chip, an embedded chip, process control equipment, or other
11 information system that is used to capture, store, manipulate, or process data, or that
12 controls, monitors, or assists in the operation of a physical apparatus that is not
13 primarily used as a computer but that relies on automation or digital technology to
14 function;

15 (4) "physical apparatus that is not primarily used as a computer"
16 includes a vehicle, a vessel, a building, a structure, a facility, an elevator, medical
17 equipment, a traffic signal, machinery, access controls, and similar types of items;

18 (5) "year 2000 date change" includes processing date or time data from,
19 into, and between calendar year 1999 and calendar year 2000, and leap year
20 calculations; in this paragraph, "processing" includes calculating, comparing,
21 sequencing, displaying, and storing.

22 * **Sec. 5.** AS 09.50.255; AS 09.65.070(d)(7), 09.65.070(e)(3), 09.65.070(e)(4), and
23 09.65.070(e)(5) are repealed January 1, 2006.

24 * **Sec. 6.** APPLICABILITY. This Act applies to all actions for damages arising from any
25 failure described in AS 09.50.255, enacted by sec. 2 of this Act, or AS 09.65.070(d)(7),
26 enacted by sec. 3 of this Act, in connection with the year 2000 date change occurring on or
27 after the effective date of this Act but before January 1, 2006.

28 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).