

SENATE BILL NO. 37

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/21/99

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to immunity for certain claims against the state, 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, impacting 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 utilizing the appropriations and personnel
7 resources available to state and municipal governments and with due diligence, the magnitude
8 and the depth of systems affected by the year 2000 date change throughout state and local
9 government operations make it likely impossible to foresee and prevent all failures due to the
10 date change;

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

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

16 (b) The intent of this Act is

17 (1) to recognize that it is a complex and difficult challenge to prepare state and
18 municipal government agency-owned, operated, and inspected electronic devices for the year
19 2000;

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

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

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

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

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

1 **Sec. 09.50.255. Immunity for claims against the state arising out of or in**
 2 **connection with the year 2000 date change.** (a) Notwithstanding any contrary
 3 provisions of AS 09.50.250, an action may not be brought against the state, or against
 4 an agent, officer, or employee of the state for an act or omission occurring in the scope
 5 of that person's employment or work for the state, for damages caused directly or
 6 indirectly by a failure, in connection with the year 2000 date change, of an electronic
 7 computing device owned, controlled, or operated by the state, or arising out of an
 8 inspection or review of an electronic computing device owned, controlled, or operated
 9 by others.

10 (b) In this section,

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

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

20 (3) "year 2000 date change" includes processing date or time data from,
 21 into, and between the twentieth and twenty-first centuries, and leap year calculations;
 22 in this paragraph, "processing" includes calculating, comparing, sequencing, displaying,
 23 and storing.

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

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

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

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

31 (B) to discover a violation of any statute, regulation, or

1 ordinance, or a hazard to health or safety if an inspection of property is made;
2 or

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

5 (2) is based upon the exercise or performance or the failure to exercise
6 or perform a discretionary function or duty by a municipality or its agents, officers,
7 or employees, whether or not the discretion involved is abused;

8 (3) is based upon the grant, issuance, refusal, suspension, delay, or
9 denial of a license, permit, appeal, approval, exception, variance, or other entitlement,
10 or a rezoning;

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

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

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

19 **(7) is caused directly or indirectly by a failure, in connection with**
20 **the year 2000 date change, of an electronic computing device owned, controlled,**
21 **or operated by the municipality, or by an agent, officer, or employee of the**
22 **municipality and occurring in the scope of that person's employment or work for**
23 **the municipality.**

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

25 (3) "electronic computing device" includes any computer hardware or
26 software, computer chip, embedded chip, process control equipment, or other
27 information system that is used to capture, store, manipulate, or process data, or that
28 controls, monitors, or assists in the operation of a physical apparatus that is not
29 primarily used as a computer but that relies on automation or digital technology to
30 function;

31 (4) "physical apparatus that is not primarily used as a computer"

1 includes a vehicle, vessel, building, structure, facility, elevator, medical equipment,
2 traffic signal, machinery, access controls, and similar types of items;

3 (5) "year 2000 date change" includes processing date or time data from,
4 into, and between the twentieth and twenty-first centuries, and leap year calculations;
5 in this paragraph, "processing" includes calculating, comparing, sequencing, displaying,
6 and storing.

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

9 * **Sec. 6.** APPLICABILITY. This Act applies to all actions for damages arising from any
10 failure described in AS 09.50.255 or AS 09.65.070(d)(7) in connection with the year 2000 date
11 change occurring on or after the effective date of this Act but before January 1, 2006.

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