

ALASKA LEGISLATURE COMMITTEES FILES 1999-2000 8072

9837 HOUSE JUDICIARY

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 18, 1999

SUBJECT: Sectional Summary of HB 42

TO: Representative Eldon Mulder
Attn: David

FROM: Michael F. Ford *M. F.*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Prohibits a person from making a false allegation in a civil pleading or from signing a civil pleading before making certain inquiries regarding the basis of the allegation. Prohibits a person from taking part in a civil action if the person acts without probable cause or acts primarily for an improper purpose. Specifies the damages that may be recovered when this section is violated, including recovery of actual reasonable attorney fees. Imposes limitations on bringing a civil action to recover damages for a violation of this section. Provides that certain types of civil actions are excluded from the provisions of this section.

Section 2. Provides for amendment of Civil Rule 82(b).

Section 3. Applicability section.

Section 4. Severability section.

Section 5. Effective date.

MFF:glc
99-011.glc



NFIB Alaska

National Federation of Independent Business

Statement of Support

of HB 42

The Frivolous Lawsuit Protection Act

February 18, 2000

The Alaska Chapter of the National Federation of Independent Business has 3,000 members, making it the largest small-business advocacy group in the state.

The legislative agenda of NFIB is determined by ballot. The ballot is our poll of members on a series of state legislative and regulatory issues.

NFIB/Alaska ballot results have shown very strong support for the passage of legislation requiring parties to a lawsuit and their attorneys to be truthful and responsible in their pleadings. Following are the ballot results on this issue:

Should the Alaska Legislature enact legislation to allow attorneys, as well as their clients, to be assessed damages for knowingly or recklessly filing false claims?

96 % YES

2 % NO

2 % Undecided

Businesses continue to be concerned about the cost of liability insurance, being sued and defending themselves in court, and the fairness of the civil justice system. NFIB members believe that if a person is found to have intentionally made a false statement of a material fact, then the injured party should be able to bring an action for damages. If honest errors are made, there should be no sanctions.

NFIB/Alaska urges support for HB 42.

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

National Federation of Independent Business

217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128



Support

SOUTHEAST CONFERENCE

Working for strong economies, healthy communities, and a quality environment in Southeast Alaska

February 20, 2000

Representative Eldon Mulder
Room 507
State Capitol Bldg
Juneau, AK 99801-1182

Dear Representative Mulder:

The Southeast Conference appreciates your efforts to reduce the financial and emotional impact of defending frivolous legal claims. The Southeast Conference supports the direction and intent of SSHB 42 "An Act relating to civil liability for certain false or improper allegations in a civil pleading or for certain improper acts relating to a civil action; amending Rule 82(b), Alaska Rules of Civil Procedure; and providing for and effective date."

Reduction of these kinds of claims is a step in the right direction and provides additional security for the citizens and businesses of Alaska. Whenever any element of fraud is involved it cost all citizens.

Thank you for introducing HB 42.

Sincerely,



Frank Homan
Executive Director

Robert A. Mintz

550 W. 7TH AVENUE, STE. 1540
ANCHORAGE, AK 99501
(907) 278-2277/fax 272-3695

February 17, 2000

Representative Eldon Mulder
State Capital Suite 507
Juneau, AK 99801

Dear Representative Mulder:

I strongly support the proposed substitute for House Bill 42.

Currently, there is, in my opinion, no effective way of holding parties responsible for frivolous pleadings. This bill assigns financial liability to those who:

- File lawsuits without probable cause or with improper motive,
- Knowingly assert false information as the basis for a lawsuit, and
- Make claims and allegations without first making reasonable inquiry.


The Bill creates an enforceable obligation for litigants and attorneys to make reasonable efforts to assure that claims have a reasonable basis. Also, if a claim is knowingly or recklessly false, both the attorney and the party can be assessed damages. The trier of fact, usually a jury, will make the determination whether the untrue information presented was intentional and material.

This Bill uses the common law malicious prosecution action as a model for establishing a new standard of conduct. This statutory version is different than the common law because it applies to claims and defenses, rather than just actions, and it makes either lack of probable cause or improper motive actionable, rather than requiring both.

In addition, the Bill takes a victim-oriented approach to the cost of frivolous lawsuits by making the injured party the vehicle for redressing the injury, instead of the judicial system. I contend that allowing an injured party to seek redress for his or her damages is a superior enforcement mechanism for two reasons. First, the frustration with the judicial system will be ameliorated to the extent that injured parties are empowered to be made whole. In other words, the enthusiasm for pursuing a claim by an injured party is proportionate to the perception of injury suffered. There is no sense in having a judge impose sanctions where the injured party perceives slight offense. Likewise, it is unjust to deny an injured party the right to compensation because a judge, who deals

with attorneys on a regular basis, decides not to exercise discretionary powers. Current law only permits the award of full attorneys' fees for vexatious or bad faith conduct. This is a much different standard of conduct than the House Bill 42 which requires, not allows, the award of actual reasonable attorneys' fees and permits the recovery of compensatory damages as well.

Very truly yours,



Robert A. Mintz

Subject: Support of HB42

Date: Wed, 23 Feb 2000 12:28:09 EST

From: KirkAWA@aol.com

To: Representative_Eldon_Mulder@legis.state.ak.us

CC: Representative_Lisa_Murkowski@legis.state.ak.us,
Representative_Pete_Kott@legis.state.ak.us, Representative_Jeanette_James@legis.state.ak.us,
Representative_Joe_Green@legis.state.ak.us, Representative_Beth_Kertulla@legis.state.ak.us,
Representative_Eric_Croft@legis.state.ak.us,
Representative_Norman_Rokeberg@legis.state.ak.us

Dear Representative Mulder,

This letter is in support of HB42, the legislation against false claims/allegations in frivolous lawsuits. I can't argue against the importance of telling the truth.

Respectfully,

Kirk Hoessle, President
Alaska Wildland Adventures

Subject: Re HB 42

Date: Thu, 24 Feb 2000 13:07:25 -0900

From: Thomas Ely <cycleak@cyclealaska.com>


Organization: Sockeye Cycle Co.

To: Representative_Eldon_Mulder@Legis.state.ak.us

Dear Representative Mulder,

I support HB 42 limiting frivolous civil suits. As an adventure tour operator we are susceptible to false claims by participants on our tours. Thanks for sponsoring this bill.

Sincerely,
Thomas Ely

 cycleak.vcf	Name: cycleak.vcf Type: VCard (text/x-vcard) Encoding: 7bit Description: Card for Thomas Ely
---	---

Subject: HB42

Date: Wed, 23 Feb 2000 10:41:37 -0900

From: Frank Rose <aklm@ptialaska.net>

Organization: Alaska Lodging Mgt., Inc.

To: Representative_Eldon_Mulder@legis.state.ak.us,
Representative_Norman_Rokeberg@legis.state.ak.us

CC: Representative_Lisa_Murkowski@legis.state.ak.us,
Representative_Jeannette_James@legis.state.ak.us,
Representative_Pete_Kott@legis.state.ak.us,
Representative_Joe_Green@legis.state.ak.us,
Representative_Beth_Kerttula@legis.state.ak.us,
Representative_Eric_Croft@legis.state.ak.us, at@gci.net,
FW Rose <aklm@ptialaska.net>

I want to speak in favor of HB42. As Alaska competes with other destinations and because operating cost in Alaska are generally higher than other destinations, it is imperative that we focus our energy on productive endeavors that deal with business operations. All too often frivolous lawsuits take up an inordinate amount of time and expense when there is no merit at all to the suit. A step in the right direction is to make sure that those who put forth false claims and allegations in law suits understand that there is liability on their part for doing so. I urge you to move this bill through committee and promote passage.

Thank you

Frank W. Rose
Alaska Lodging Mgt
PO Box 72478
Fairbanks, Alaska

HB

43



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

March 5, 1999

MEMORANDUM

TO: Representative Pete Kott, Chair
House Judiciary Committee

FROM: Representative Gary Davis 

RE: Request for Hearing on House Bill 43 *"An act relating to police training surcharges imposed for violations of municipal ordinances"*

Please schedule a committee hearing on the House Bill 43 at your earliest convenience. Attached are the following materials for inclusion in the committee packet:

- Sponsor Statement;
- Sectional Analysis;
- Zero fiscal notes from the Departments of Community and Regional Affairs and Public Safety; and
- Affected Statutes.

I would also like to request that this hearing be teleconferenced to Kenai and Anchorage to enable municipal attorneys with whom I've been working to testify.

Thank you for your consideration of this request. If you have any questions or would like additional information, please contact Deb Davidson of my staff.

Attachments



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SPONSOR STATEMENT

An act relating to police training surcharges imposed for violations of municipal ordinances

The Police Training Fund was established to provide training for the law enforcement and corrections community of the state. Appropriations to this fund may be made from income derived from the imposition of surcharges on criminal convictions.

Last year, legislation was passed expanding the types of crimes for which a surcharge is imposed and increasing the amount of the surcharge applied. This surcharge is imposed on both state and municipal law violations.

Recently, concern was raised that the phrasing used in the legislation could be interpreted as requiring surcharges to be imposed on civil as well as criminal violations of the law. Additionally, it was argued that if a local government did not authorize the imposition of a surcharge, an entire ordinance could be found invalid rather than just the section imposing the fine.

House Bill 43 is a housecleaning measure to address these two concerns. First, the legislation clarifies that the surcharge will be imposed on a violation of a municipal ordinance that imposes a criminal penalty for its violation. Second, this legislation specifies that the municipality can not enforce (or collect) a penalty for a violation unless the municipality also authorizes the imposition of a surcharge on the violation.

HB43/ss/020199

Session: State Capitol, Juneau, AK 99801 • Phone 907/465-2693 or 800/463-2693 • Fax 907/465-3835
Interim: 145 Main St. Lp., Ste. 223, Kenai, AK 99611 • Phone 907/283-7095 or 907/224-2051 • Fax 907/283-3075
Email: Representative_Gary_Davis@legis.state.ak.us



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SECTIONAL ANALYSIS

An act relating to police training surcharges imposed for violations of municipal ordinances

- Section 1: Amends AS 12.55.039, Surcharges, subsection (a)(4) to clarify that surcharges are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation.
- Section 2: Amends AS 29.25.074, Surcharges, subsection (a) to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

HB43/sa/020199

Session: State Capitol, Juneau, AK 99801 • Phone 907/465-2693 or 800/463-2693 • Fax 907/465-3835
Interim: 145 Main St. Lp., Ste. 223, Kenai, AK 99611 • Phone 907/283-7095 or 907/224-2051 • Fax 907/283-3075
Email: Representative_Gary_Davis@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO: HB 43

Revision Date: 2-23-99

Dept. Affected: Department of Public Safety

Title: An Act... relating to police training surcharges

BRU:

Component: Alaska Police Standards Council

Sponsor: Rep. Davis

Requestor: (H) C&RA

COMPONENT SERIAL NO. 0519

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 00) impact: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared By: Laddie Shaw

Phone: 465-4378

Division: Alaska Police Standards Council

Date: 2-23-99

Approved by Commissioner:

Date: 2-25-99

Agency:


 Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to police training surcharges BRU: _____
imposed for violations of municipal ... Component: _____
 Sponsor: REPRESENTATIVE DAVIS
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709
 Division: Division of Administrative Services Date: 2/22/99
 Approved by Commissioner: *Mike Dorn* Date: 2/22/99
 Agency: Community & Regional Affairs

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(2) make written findings of the facts considered in

(A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and

(B) determining the defendant's gross and daily net incomes.

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.

(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) The Alaska Court System shall evaluate and prepare a report every two years not later than February 1 on the use of day fines and their effectiveness. The court system shall notify the legislature that the report is available. The report must include

(1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;

(2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,

(A) eligible for a day fine, who receive another sentence; and

(B) not eligible for a day fine, who receive another sentence;

(3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;

(4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and

(5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund. (§ 5 ch 79 SLA 1994; am § 6 ch 21 SLA 1995)

Postponed repeal of subsection (f). — Section 7, ch. 79, SLA 1994 repeals (f) of this section, effective February 2, 2004.

Cross references. — For effect of enactment of this section on Alaska Rule of Criminal Procedure 32, see § 6, ch. 79, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in the first sentence of the

introductory language of subsection (f), substituted "prepare a report every two years" for "report every two years to the legislature" and added the second sentence.

Legislative history reports. — For House letter of intent relating to CSHB 119(JUD) am. from which ch. 79, SLA 1994, which enacted this section derived, see 1993 House Journal 1413.

Sec. 12.55.039. Surcharge. (a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

(1) felony shall be assessed a surcharge of \$100;

(2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

(3) misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be imposed for the misdemeanor or ordinance violation, other than a provision identified in (2) of this subsection, shall be assessed a surcharge of \$50;

(4) violation or an infraction under state law or a misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may not be imposed for the misdemeanor or ordinance violation shall be assessed a surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994; am § 4 ch 56 SLA 1998)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective August 27, 1998, rewrote subsection (a).

Effective dates. — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

Editor's notes. — With respect to subsection (d), § 10, ch. 56, SLA 1998 provides the following: "Notwithstanding the requirements of AS 12.55.039(d) and AS 37.05.142 that surcharges collected under AS 12.55.039 be accounted for separately, the Alaska Court System shall deposit money collected under AS 12.55.039 in the general fund and shall, by February

1 of each year, provide to the Department of Administration, to the Legislative Budget and Audit Committee, and to each house of the legislature an estimate of the money collected under AS 12.55.039 for that fiscal year."

Section 11, ch. 56, SLA 1998 provides a repeal date for § 10, ch. 56, SLA 1998 as follows: "Section 10 of this Act is repealed on the earlier of (1) the date that the Alaska Court System has the capability to separately track and account electronically for money collected under AS 12.55.039, or (2) June 30, 2002. The executive director of the Alaska Court System shall notify the lieutenant governor and the revisor of statutes when the electronic capability described in this section has been obtained."

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed. § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss and may order restitution that may include compensation for loss of income.

THE
FOLLOWING
DOCUMENT(S)
ARE
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- enactments regulating lobbying. 42 ALR3d 1046.
- Validity of statute or ordinance forbidding pharmacists to advertise prices of drugs or medicines. 44 ALR3d 1301.
- Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.
- Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 ALR3d 1393.
- Operation of nude-model photographic studio as offense. 46 ALR3d 1313.
- Validity and construction of statute or ordinance forbidding treatment in health clubs or massage parlors by persons of the opposite sex. 51 ALR3d 936.
- Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.
- Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 359.
- Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.
- Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.
- Validity and construction of curfew statute, ordinance, or proclamation. 59 ALR3d 321; 53 ALR4th 1056.
- Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 ALR3d 1237.
- Application of city ordinance requiring license for laundry to supplier of coin-operated laundry machines intended for use in apartment building. 65 ALR3d 1296.
- Application of statute or regulation dealing with registration or carrying of weapons to transient non-residents. 66 ALR3d 1253.
- Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.
- Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.
- Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.
- Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.
- Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.
- Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 ALR3d 655.
- What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.
- Validity and construction of statute or ordinance prohibiting desecration of church. 90 ALR3d 1128.
- Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 ALR4th 1127.
- Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers." 80 ALR4th 70.
- Validity, construction, and effect of juvenile curfew regulations. 83 ALR4th 1056.
- Laws regulating begging, panhandling, or similar activity by poor or homeless persons. 7 ALR5th 455.
- Validity and construction of statutes or ordinances imposing civil or criminal penalties on alarm system users, installers, or servicers for false alarms. 17 ALR5th 825.
- Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 104 L Ed 2d 1078.

Sec. 29.25.010. Acts required to be by ordinance. (a) In addition to other actions that this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section does not grant authority, but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

Sec. 29.25.060. Resolutions. (a) The governing body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

NOTES TO DECISIONS

Cited in *Lazy Mt. Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373 (Alaska 1995).

Sec. 29.25.070. Penalties. (a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

(b) The municipality or an aggrieved person may institute a civil action against a person, including a minor as provided in AS 29.25.072, who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

(d) This section does not apply to an ordinance adopted under AS 04.11.501(c).

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of an ordinance under (b) of this section against a minor. Unless the commissioner and the municipality have negotiated an agreement making other arrangements for the municipality to provide the notice required by this subsection, the municipality shall provide the notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 18 years of age. (§ 8 ch 74 SLA 1985; am § 16 ch 80 SLA 1986; am § 11 ch 76 SLA 1987; am § 65 ch 101 SLA 1995; am §§ 2, 3 ch 107 SLA 1998)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection c.

The 1998 amendment, effective July 1, 1998, in-

serted "including a minor as provided in AS 29.25.072," in the first sentence in subsection (b) and added subsections (e) and (f).

NOTES TO DECISIONS

Punishment for failure to list taxable property authorized. — A city had the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and a former similar provision provided the authority to prescribe its punishment, including fine and imprisonment. *City of Anchorage v. Campbell*, 105 F Supp 57, 7 D. Alaska 19521.

An act may be made a penal offense under both state statute and municipal ordinance. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Ordinance may impose penalties on class of persons. — While an ordinance which made an act done by one penal and imposed upon another no penalty for a like act done under like circumstances could not receive judicial sanction for the reason that it was unjust and unreasonable, the same could not be said of discrimination by municipal authority against a whole class of persons who were lawfully regarded as proper subjects for police regulation, such as persons without occupation or visible means of support. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Sec. 29.25.072. Civil penalties for violation of municipal ordinances by minors. (a) Except as otherwise provided in this section, the enforcement under AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

(b) If provision is made by ordinance for use of a hearing officer to decide enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for the municipality for decision.

(c) An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense. (§ 4 ch 107 SLA 1998)

Effective dates. — Section 59, ch. 107, SLA 1998 provides that this section applies "to all offenses committed on or after July 1, 1998."

Editor's notes. — Section 57, ch. 107, SLA 1998

Sec. 29.25.074. Surcharge. (a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imposition of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 56 SLA 1998)

Revisor's notes. — This section was enacted as AS 29.25.072. Renumbered in 1998. which enacted this section, took effect on August 27, 1998.

Effective dates. — Section 8, ch. 56, SLA 1998.

Sec. 29.25.075. Collection of penalties. The court may collect for a municipality any monetary penalty or surcharge or item to be forfeited as a result of the violation of an ordinance. The supreme court may prescribe by rule the fees to be charged by all courts to municipalities for providing collection services under this section. (§ 47 ch 36 SLA 1990; am § 9 ch 56 SLA 1998)

Effect of amendments. — The 1998 amendment, effective August 27, 1998, inserted "surcharge or" in the first sentence.

Sec. 29.25.080. Breast-feeding. A municipality may not enact an ordinance that prohibits or restricts a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. In a municipal ordinance, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this section may be construed to authorize an act that is an offense under a municipal ordinance that establishes an offense with elements substantially equivalent to the elements of an offense under AS 11.61.123. This section is applicable to home rule and general law municipalities. (§ 4 ch 78 SLA 1998)

HB

57

AMENDMENT #8

In the House

TO: CSHB57(JUD)

by Green

Page 3, Line ⁹8, following "others"

1. Insert: "The immunity provided in this section applies unless the affected
2. party shows by clear and convincing evidence that the state did not use
3. good faith efforts to avoid the failure that caused the damages claimed in
4. the civil action. As used in this section, the state establishes its good
5. faith efforts as a matter of law if it has made efforts to identify, test, and
6. develop contingency plans for critical systems."

Page 4, Line ²⁹28, following "^{law}municipality" *delete remaining sentence
three line 21, page 5*

1. Insert: "The immunity provided in this section applies unless the affected
2. 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
4. claimed in the civil action. As used in this section, the municipality
5. establishes its good faith efforts as a matter of law if it has made efforts
6. to identify, test, and develop contingency plans for critical systems."

4/7

A M E N D M E N T

#6

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 57(JUD), Draft Version "D"

adopted

- 1 Page 3, lines 8 - 10:
- 2 Delete "The immunity described in this subsection applies only if the affected party
- 3 shows by clear and convincing evidence that the state did not use good faith efforts to avoid
- 4 the failure that caused the damages in the civil action."

4/7

AMENDMENT # 7

OFFERED IN THE HOUSE BY REPRESENTATIVE ROKEBERG
TO: CSHB 57(JUD), Draft Version "D"

1 Page 1, line 3, following "change;":
2 Insert "amending Rule 23, Alaska Rules of Civil Procedure;" ✓

3 Page 3, following line 10:
4 Insert a new subsection to read:
5 "(b) A civil action brought against the state, or against an agent, officer, or
6 employee of the state, for damages arising from the year 2000 date change and not
7 precluded by (a) of this section may not be brought as a class action unless each
8 member of the class has a claim for economic loss that exceeds \$50,000."
delete

9 Reletter the following subsections accordingly.

10 Page 5, following line 16:
11 Insert a new bill section to read:
12 "* Sec. 5. AS 09.65.070 is amended by adding a new subsection to read:
13 (f) A civil action brought against a municipality, or against an agent, officer,
14 or employee of a municipality, for damages arising from the year 2000 date change
15 and not precluded by (d)(7) of this section may not be brought as a class action unless
16 each member of the class has a claim for economic loss that exceeds \$50,000."

17 Renumber the following bill sections accordingly.

18 Page 5, lines 17 - 18:
19 Delete "09.65.070(e)(4) and 09.65.070(e)(5)"
20 Insert "09.65.070(e)(4), 09.65.070(e)(5), and 09.65.070(f)"

1 Page 5, following line 18:

2 Insert a new bill section to read:

3 "* Sec. 7. AS 09.65.255(b), enacted by sec. 2 of this Act, and AS 09.65.070(f), enacted
4 by sec. 5 of this Act, have the effect of amending Rule 23, Alaska Rules of Civil Procedure,
5 by requiring, in certain class actions relating to the year 2000 date change, that each member
6 of the class have a claim for economic loss that exceeds \$50,000."

7 Renumber the following bill sections accordingly.

4/7

Amendment

~~###~~ #8

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CS FOR HB 57 (JUD)

1. Page 3, line 8, delete "The immunity described in this subsection applies only if the"
2. Page 3, line 8, insert "The immunity described in this subsection does not apply if the"
3. Page 3, line 24 after "committee," insert "regional educational attendance area, city or borough school district,"

1-GH1005\G
Ford✓
4/8/99

4/9

Kott
4/8/99

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:
Referred:**

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,

6 (1) for damages caused directly or indirectly by a failure of an
7 electronic computing device owned, controlled, or operated by the state; or

8 (2) arising out of an inspection or review of an electronic computing
9 device owned, controlled, or operated by others.

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

12 (c) In this section,

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

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

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

25 (4) "year 2000 date change" includes processing date or time data from,
26 into, and between calendar year 1999 and calendar year 2000, and leap-year
27 calculations; in this paragraph, "processing" includes calculating, comparing,
28 sequencing, displaying, and storing.

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

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

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

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

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

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

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

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

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

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

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

24 (7) is caused directly or indirectly by a failure, in connection with
25 the year 2000 date change, of an electronic computing device owned, controlled,
26 or operated by the municipality, or by an agent, officer, or employee of the
27 municipality and occurring in the scope of that person's employment or work for
28 the municipality; this paragraph does not affect immunity provided to a
29 municipality under another provision of law; the immunity described in this
30 paragraph applies only if the municipality shows by a preponderance of the
31 evidence that

1 (A) the municipality made substantial efforts to avoid the
2 damages claimed in the civil action, such as

3 (i) inventorying the electronic computing devices used
4 by the municipality that may experience year 2000 date change
5 failures;

6 (ii) identifying critical electronic computing devices
7 necessary to conduct the operations of the municipality;

8 (iii) identifying the potential for year 2000 date
9 change failures associated with electronic computing devices used
10 by the municipality;

11 (iv) preparing a plan to reprogram, fix, repair,
12 replace, or otherwise remedy the electronic computing devices
13 necessary to avert failure resulting from the year 2000 date change;

14 (v) complying with generally accepted practices
15 related to testing information systems for compliance with the year
16 2000 date change; and

17 (vi) developing contingency plans in the event of an
18 electronic computing device failure; or

19 (B) the municipality used reasonable care to prevent or
20 remedy damages arising from the year 2000 date change and caused
21 directly or indirectly by a failure of an electronic computing device.

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

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

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

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

5 * Sec. 5. AS 09.50.255; AS 09.65.070(d)(7), 09.65.070(e)(3), 09.65.070(e)(4), and
6 09.65.070(e)(5) are repealed January 1, 2006.

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

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

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 9, 1999

SUBJECT: Civil immunity - (CSHB 57(JUD))

TO: Representative Pete Kott
Attn: Cory Winchell

FROM: Michael F. Ford 
Legislative Counsel

You have asked if a regional educational attendance area would fall under the definition of "state" in CSHB 57(JUD). I believe that it would. For purposes of CSHB 57(JUD), "state" includes an instrumentality of the state. An R.E.A.A. is an instrumentality of the state. Although there are municipal school districts, an R.E.A.A. is not a municipality. See AS 01.10.060.

Please contact me if you have further questions.

MFF:glc
99-175.glc

AMENDMENT #3

OFFERED IN THE HOUSE
TO: HB 57

BY REPRESENTATIVE CROFT

1 Page 3, line 9, following "others.":

2 Insert "The immunity described in this subsection does not apply unless the state
3 shows ~~(by a preponderance of the evidence)~~ that the state used good faith efforts to avoid the
4 failure that caused the damages claimed in the civil action."

5 Page 4, line 23, following "municipality":

6 Insert "the immunity described in this paragraph does not apply unless the
7 municipality shows ~~(by a preponderance of the evidence)~~ that ~~the municipality~~ used good
8 faith efforts to avoid the failure that caused the damages claimed in the civil action"

#4, w amend.

3/17

THE IMMUNITY DESCRIBED IN THIS SUBSECTION
APPLIES ONLY IF THE AFFECTED PARTY
SHOWS THAT THE [STATE] DID NOT USE
GOOD FAITH EFFORTS TO AVOID THE
FAILURE THAT CAUSED THE DAMAGES
CLAIMED IN THE CIVIL ACTION.

AMENDMENT #5

3/17

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HB 57

- 1 Page 2, line 29:
- 2 Delete "consequences"
- 3 Insert "damage to property as a result"

- 4 Page 3, line 1, following "for":
- 5 Insert "property damage"

- 6 Page 3, line 3, following "action":
- 7 Insert "for property damage"

- 8 Page 3, line 5:
- 9 Delete "damages"
- 10 Insert "damage to property"

- 11 Page 4, line 19, following "is":
- 12 Insert "an action for property damage that is"

- 13 Page 5, line 9, following "for":
- 14 Delete "damages"
- 15 Insert "damage to property"

Failed

*adopted, as amended
3/17*

AMENDMENT #2, as amended

OFFERED IN THE HOUSE

BY REP. ROKEBERG

TO: HB 57

Page 3:

Delete lines 11-16

delete

Insert: (1) "electronic computing device" includes any computer hardware or software, a computer chip, an embedded chip, process control equipment, or other information system that is used to capture, store, manipulate, or process data;

Page 3:

Delete lines 20-23

Insert: (3) "year 2000 date change" includes processing date or time data from, into and between calendar year 1999 and calendar year 2000, and leap year calculations; in this paragraph, "processing" includes calculating, comparing, sequencing, displaying and storing.

OK

3/17

AMENDMENT #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HB 57

w/ draw

1 Page 3, line 9, following "others.":

2 Insert "The immunity described in this subsection does not apply unless the state
3 shows ~~by a preponderance of the evidence~~ that the state used good faith efforts to avoid the
4 failure that caused the damages claimed in the civil action."

5 Page 4, line 23, following "municipality":

6 Insert "the immunity described in this paragraph does not apply unless the
7 municipality shows ~~by a preponderance of the evidence~~ that the municipality used good
8 faith efforts to avoid the failure that caused the damages claimed in the civil action"

3/17

AMENDMENT # 4

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HB 57

w/ drawn

1 Page 3, following line 9:

2 Insert a new subsection to read:

3 "(b) This section does not preclude liability for civil damages as a result of
4 gross negligence or reckless or intentional misconduct."

5 Reletter the following subsection accordingly.

6 Page 4, line 23, following "municipality":

7 Insert "; this paragraph does not preclude liability for civil damages as a result
8 of gross negligence or reckless or intentional misconduct"

u

7

3/17

AMENDMENT # ~~88~~

OFFERED IN THE HOUSE
TO: HB 57

BY REPRESENTATIVE CROFT

- 1 Page 1, lines 1 - 2:
- 2 Delete "a municipality,"

- 3 Page 1, line 2:
- 4 Delete "either"
- 5 Insert "the state"

- 6 Page 1, lines 13 - 14:
- 7 Delete "and municipal"

- 8 Page 2, line 7:
- 9 Delete "and municipal governments"
- 10 Insert "government"

- 11 Page 2, line 8:
- 12 Delete "and local"

- 13 Page 2, lines 17 - 18:
- 14 Delete "and municipal"

- 15 Page 2, line 20:
- 16 Delete "and municipal governments"
- 17 Insert "government"

- 18 Page 2, line 25:

*Not offered
Nothing
done w/*

1 Delete "or municipal ordinances"

2 Page 2, line 28:

3 Delete "and municipal ordinance"

4 Insert "law"

5 Page 3, line 24, through page 5, line 6:

6 Delete all material.

7 Renumber the following bill sections accordingly.

8 Page 5, line 7:

9 Delete "; AS 09.65.070(d)(7), and 09.65.070(e)(3) and (4) are"

10 Insert "is"

11 Page 5, line 10:

12 Delete "or AS 09.65.070(d)(7)"

AMENDMENT

OFFERED IN _____

BY

To: HB 57

Page 3, following line 9:

Insert a new subsection to read:

"(b) The immunity provided within this sections shall not apply

(1) for a state owned or operated health care facility if the failure was the substantial cause of death or bodily injury; or

(2) if it can be shown by clear and convincing evidence that the intentional misconduct of any agent, officer or employee of the state was the substantial cause of the failure."

w/ drawn

Reletter the following subsection accordingly

Page 4, line 23, following "municipality":

Insert "; this paragraph shall not apply

(1) for a municipality owned or operated health care facility if the failure was the substantial cause of death or bodily injury; or

(2) if it can be shown by clear and convincing evidence that the intentional misconduct of any agent, officer or employee of the municipality was the substantial cause of the failure."

3/15

AMENDMENT #1

adopted

OFFERED IN _____

BY _____

TO: HB 57

1 Page 3, following line 19:

2 Insert a new paragraph to read:

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

6 Page 3, line 20:

7 Delete "(3)"

8 Insert "(4)"



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907)586-1325, Fax (907)-463-5480

March 15, 1999

Representative Pete Kott, Chair
House Judiciary Committee
State Capitol
Juneau, AK 99811

RE: HB57 - Immunity for claims against the state or municipality arising out of connection with the Year 2000 date change

Dear Representative Kott:

On behalf of the Alaska Municipal League and Alaska Conference of Mayors, we are writing in support of HB 57. Our position is outlined in the 1999 Municipal Policy Statement as follows:

Utilities and Environment, Section E. 2. Year 2000 (Y2K) Computer Failures: The League urges the state to support and coordinate efforts to fix potential Y2K computer failures in the state and its political subdivisions through technical assistance, coordination of planning and resources, and direct assistance and funding. The League also supports the adoption of legislation to hold the state and its political subdivisions harmless from any liability for service interruptions or problems arising from Y2K problems.

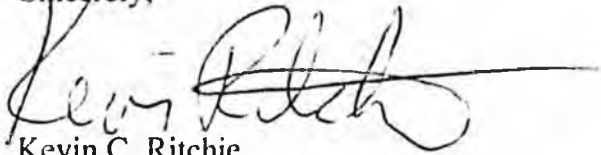
The Alaska Municipal League has been working hard to alert municipalities to the potential problems associated with the Year 2000 computer changes. Last year, we urged municipalities to establish Y2K Task Force to coordinate actions that would avoid negative impacts on communities. We have published numerous articles on the issue in our newsletter, held training sessions at the annual conference in Fairbanks, and established links on the AML homepage to provide additional information. Attached is a copy of the article from our February newsletter.

The National League of Cities, which is a nationwide organization of cities, set up a program for municipalities called "Y2K & You," which includes a video on the issues and an outline of a plan to walk cities through the necessary steps to avoid problems. This package was made available to all Alaskan municipalities.

However, the threat of liability on unforeseen problems looms large over the state and municipalities. We believe the people of the state would prefer that limited resources be used to continue efforts to fix the problems rather than use local tax dollars for litigation.

Obviously, passage of this bill this session is critical to all of us, and we appreciate your favorable consideration of HB 57.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Ritchie", with a long horizontal flourish extending to the right.

Kevin C. Ritchie
Executive Director

Enclosure

cc: House Judiciary Committee

Y2K

The Problem

The Year 2000 problem (or Y2K for short), started when early computer programmers sought to save memory space when abbreviating the date by using just two digits instead of four to represent the year. Unfortunately, they did not then realize that this cost saving measure would carry through to cause confusion between the centuries for systems run by computer chips.

This "crisis" has the potential to knock out electric service, stop traffic, impair public health, ground planes, and silence telephones and radios. Automated office systems and functions such as billing, record keeping, tax collection, public records management, facilities management, and public utilities service provision must be painstakingly examined to correct codes and programs.

For some places, much of the necessary work to assure compliance may be accomplished by researching manufacture's sites on the Internet for Y2K certification, possibly downloading software "patches" to fix a specific application and/or running Y2K compliant testing programs available free from the net. However, larger cities may need to hire a consulting firm to analyze their systems along with programmers to rewrite the code on older programs specifically designed for your municipality. Your staff needs to contact the manufacturers; decide whether to correct or replace problematic technology; make other appropriate adjustments; and test the system in time to make further adjustments, and then pay for it.

Doing the Fix ...and avoiding liability

A Guide for Municipalities

by Kevin J. Best, Manager, Research & Information Management

It's not just a computer problem

The Y2K problem also may affect fax machines, telephone systems, answering machines, police emergency equipment, and anything else that has an electronic chip. Check with the manufacturer of all your systems or contact a consultant who may have a comprehensive database of Y2K compliant software and hardware. Your municipality should purchase no electronic equipment or service unless it is certified, in writing, by the manufacturer as being Y2K compliant.

Also check with contractors and vendors that do business with your town including banks, legal firms, appraisal companies, landfills maintenance companies, etc. Letters should be sent to each company inquiring about its ability to deliver your billing, analysis or other support services in light of the Y2K problem.

Approaches

An effective approach for addressing the Y2K problem will include four basic elements:

- ❖ Inventory
- ❖ Remediation
- ❖ Testing
- ❖ Contingency Planning

Inventory:

The first step toward Y2K compliance is to prepare a comprehensive inventory of the city's *critical* business functions. Critical functions should include all key operations. Next identify the systems (e.g., personal computers, spreadsheets, copiers and telephones) that support these functions. Systems should also include other automated items used to support your business activities.

The inventory should identify and catalog:

- ❖ All databases
- ❖ Internal and external data sharing
- ❖ Vendor hardware (including supplier, make and model)
- ❖ Software (including supplier, version and release)
- ❖ Environmental controls (power, heating, ventilation, etc.)
- ❖ Communications devices (telephone, data switches, etc.)
- ❖ Financial systems (banking, insurance, credit bureaus, etc.)

Embedded Chips Another Challenge:

These special purpose chips control the operation of numerous systems that we often take for granted. Industry experts predict that of the 25 billion chips in electronic components, only about two percent will fail, but there's no way to be certain of which two percent. Finding and testing embedded chips is tricky because they operate inside other pieces of equipment and are difficult to

(continued on page 9)

locate and access. For many embedded chips, no correction is possible since the chips were designed as unique, single-purpose systems. In such cases, your alternatives are to contact the vendor or replace the embedded system.

To identify devices with embedded chip problems, answer these four questions for stand-alone (non-computer) electronic devices:

1. Does it operate with electricity or battery?
2. Does it have a display?
3. Does it have a microprocessor?
4. Does it use a calendar to schedule events?

If you were able to answer *no* to every question, the device may be at low risk for embedded chip problems, but the chips within may still use date functions, even if the device itself is not dependent on the date for proper operation. For example, a piece of equipment may be usable whenever you turn it on without regard to date or time, but may still have micro-processors that will not allow its operation unless required maintenance had been performed. If that microprocessor thinks it has been 99 years since the last required maintenance, you may experience problems. That means you still have to do the research. If you answer *yes* to any of these questions, especially to question 4, put the device at high risk for problems.

Remediation:

The next step is to decide what systems in your inventory are not Y2K compliant and need to be fixed or can be replaced. If the problem is best approached by fixing the system, your technician may use different techniques including fully converting all date formats in the system to



a four digit year, or making changes to the program code so that the system will make adjustments for problem dates or compressing date fields to accommodate for the long date format.

Personal Computer Fixes:

Stand-alone PC's especially those manufactured after 1997, should have less to worry about than large mainframe computers which run older programming languages (COBOL, FORTRAN) or with software written specifically for the user's needs, (e.g., financial management packages). For PC user, it's possible that you will have no problems at all, or that problems you have will be in "so what" category. Your computer will probably start, load and function as usual. If anything, you may just need to reset the date. But remember, your computer will still operate, even *with an incorrect* date. If you use your computer for any accounting or date functions, you should look at it very closely. Macintosh computers don't have a Y2K problem, because they store the date in the long, four-digit format.

Testing - Will the System Work?

As with any significant effort, testing is critical to ensure that your remediation efforts will work as anticipated. Testing can be time consuming and may be expensive. Simulated tests may be conducted

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The following is a short list of examples of systems with embedded chips that should be tested or certified:

- ✓ Air conditioning systems
- ✓ Answering machines
- ✓ Automatic doors
- ✓ Automatic flush plumbing
- ✓ Cable systems
- ✓ Cameras-still and video
- ✓ Cash registers
- ✓ Check protectors
- ✓ Clocks
- ✓ Vaults/safes on automatic timer
- ✓ Water pumps & valves

COMMUNICATIONS:

- ✓ Telephones and switches
- ✓ Cellular phones
- ✓ Pagers
- ✓ Phone cards
- ✓ Modems
- ✓ Data switching equipment
- ✓ Date/time machines
- ✓ Door locks
- ✓ Electric appliances
- ✓ Electricity meters
- ✓ Elevators and escalators
- ✓ Environmental monitoring equipment
- ✓ Fax machines
- ✓ Fire alarms
- ✓ Flow control devices
- ✓ Gas meters
- ✓ Gas pumps
- ✓ Hot water heaters
- ✓ Lawn sprinklers on automatic timer
- ✓ Lighting on automatic timer
- ✓ Mail machines-base or meter
- ✓ Metal detectors
- ✓ Parking meters
- ✓ Photocopiers
- ✓ Power grid systems
- ✓ Power stations
- ✓ Radar systems
- ✓ Radar systems
- ✓ Radio equipment
- ✓ Security systems
- ✓ Test and diagnostic equipment
- ✓ Ticketing systems
- ✓ Traffic light controllers

TRANSPORTATION:

- ✓ Automobiles
- ✓ Airplanes
- ✓ Buses
- ✓ Boats

using the following critical dates: December 31, 1999; January 1, 2000; February 29, 2000 (leap day); and since the calendar repeats itself in cycles, a comparison of 20th century baseline date from dates separated by a 28 year period.

Interfaces

Probably the most frequently ignored aspect of testing is interfaces with external organizations, agencies or vendors. These critical data exchanges need to be tested thoroughly, going both ways and "end-to-end." For example, for government entities, end-to-end testing should be done by testing successful data transfer beginning from the city, then to the county, the state, and the federal government, and back down the path to the city again.

Contingency Planning

The next step to being adequately prepared for the Year 2000 is to develop contingency plans that address potential failures. Based on the inventory of your city's systems and equipment, identify the most likely types of failures for each. For example, you may consider whether a failure could lead to:

- ❖ Loss of electrical power
- ❖ Loss of environmental controls
- ❖ Breaches of security
- ❖ System hang-up or shutdown
- ❖ Interruptions of communications
- ❖ Files corrupted or "lost"
- ❖ Degradation of system performance
- ❖ Incorrect but acceptable data errors
- ❖ Irrational data presented to users
- ❖ Unreliable/unpredictable results

You're Legal Liability

The potential effects of the Year 2000 problem seem likely to create an environment in which legal action will thrive. Experts are predicting that if local governments are unsuccessful in achieving 100 percent compliance, they may be sued for damages by citizens,

individually or in class action suits, or by companies within their geographic boundaries.

Negligent Liability:

From a liability standpoint, there could potentially be an onslaught of negligence claims. The concern is that in court, it will be found that a "reasonable person" would have addressed the Y2K issue and made significant attempts to correct the problem before it occurred.

Organizations trying to defend themselves against Y2K litigation must be able to demonstrate that they took *reasonable and prudent steps* to bring themselves into full compliance ("due diligence," a legal standard). Local government efforts should be documented in a written trial that addresses Y2K awareness, assessment and resolution. This record includes meeting minutes, actions, and discussions with vendors. The record should answer questions such as:

- How did your city become aware of the problem?
- What steps did you take to assess the problem's level of impact on your city's services and community?
- What steps did you take to know where your city was in the overall picture of compliance and exposure?
- What priorities did you establish, and how did you achieve them?
- Which vendors and solutions did you choose?

It is essential that the policies for dealing with Y2K be established and documented at the policymaking level (typically the city council), and that there is careful and full compliance with those policies by whomever is charged with executing them.



Include Warranty Language in Contracts:

In new contracts, make sure that suppliers, integrators, and Y2K contractors warrant their products to be Y2K compliant. In addition to new vendor contracts cities should consider renegotiating existing contracts to include the Y2K warranty language.

Under exciting maintenance agreements, some vendors may disclaim liability for providing Y2K upgrades at no additional costs. Cities should request in writing a vendor make its software Y2K compliant at the vendor's own cost under long-term maintenance agreements. Experts speculate that failure to do so may constitute a waiver by customers of their right to later seek reimbursement for the costs incurred in making the changes themselves. An excellent resource on this subject is the National League of Cities' publication, *The Year 2000 Problem*. Call 800-784-8976 to order a copy (\$5 for NLC members, \$10 for non-members).

However, don't let the threat of lawsuits paralyze your jurisdiction. Your best defense is to establish evidence of due diligence. By equipping your municipality with knowledge and then acting to the best of your ability, you probably have created the best possible defense.

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Immunity Legislation

Several states have passed laws to protect private business and government agencies from legal action arising from the Year 2000. In Alaska, Governor Knowles introduced SB 37/HB 57, which would grant immunity to the state and municipalities arising out of or in connection with the Year 2000 date change. Both the state and municipalities have to apply due diligence to prevent system failures of public services. These bills must work their way through the legislative process before such immunity goes into effect.

Conclusion

Just as each municipality is unique in its service delivery, each will approach the problem differently depending on the amount, sophistication, age and design of our equipment and how prepared your staff is in preventing the problems.

For many smaller municipalities, your Y2K project will be simply checking with manufacturers for assurances that your automated systems, personal computers and the software are Y2K compliant. Regardless of size, each governing body should carefully consider how the Year 2000 problem will affect municipal operations and liability.

There is a vast amount of information available on this topic. The National League of Cities (NLC), has launched a public awareness campaign, "Y2K & You," and has developed a "tool kit" to provide local governments with a comprehensive package of resource materials to deal with Y2K. The Alaska Municipal League homepage has several links at <http://www.alaska.net/~aml/>. And finally, two particularly good sources for more specific information are the Access Local Government site's Y2K library section at <http://www.algov.org> and Public Technology, Inc. at <http://www.pti.nw.dc.us/y2k.htm>.

Information for this article was gathered from various sources, including Public Technology, Inc. (PTI), the National League of Cities (NLC), the League of Minnesota Cities and the League of Oregon Cities.

Year 2000 Internal Assessment Checklist

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> yes <input type="checkbox"/> no | Has your municipality established a Y2K task force? | <input type="checkbox"/> yes <input type="checkbox"/> no | Has your municipality identified people/processes which depend on data from outside sources? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Has your municipality conducted an employee Y2K awareness campaign? | <input type="checkbox"/> yes <input type="checkbox"/> no | Has your municipality analyzed dependencies on data provided by other organizations? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Has your municipality defined Y2K compliance? | <input type="checkbox"/> yes <input type="checkbox"/> no | Contacted all entities with whom it exchanges data? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Has your municipality conducted a comprehensive inventory of its information and infrastructure systems? | <input type="checkbox"/> yes <input type="checkbox"/> no | Made contingency plans if no data are received from external sources? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Has an estimate been made of the resources -- including people, time and dollars required to fix the Y2K problem? | <input type="checkbox"/> yes <input type="checkbox"/> no | Made plans to determine that incoming data are valid? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Have the costs been submitted in a formal budget request? | <input type="checkbox"/> yes <input type="checkbox"/> no | Developed contingency plans to handle invalid data? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Have target completion dates been established, responsibility and accountability assignments been made and reporting requirements identified? | <input type="checkbox"/> yes <input type="checkbox"/> no | Identified vulnerable "outside" systems/processes which may affect your operations and developed contingency plans for failures of these systems: |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Have computer hardware and software applications been tested for compliance? | <input type="checkbox"/> yes <input type="checkbox"/> no | telecommunications systems? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Have the above systems been fixed (or replaced) and retested? | <input type="checkbox"/> yes <input type="checkbox"/> no | power grids? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Have software vendors been contacted? (Check computer company Web sites to find lists of hardware/software products that are Y2K compliant?) | <input type="checkbox"/> yes <input type="checkbox"/> no | banking systems? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Have embedded systems (phone, security, elevators, water systems, etc.) been tested and vendors contacted? | <input type="checkbox"/> yes <input type="checkbox"/> no | Have procedures been established for accessing and processing archived data? |
| <input type="checkbox"/> yes <input type="checkbox"/> no | Has the impact of failure been determined and ranked for each system based on its relation to the operation of your municipality? | <input type="checkbox"/> yes <input type="checkbox"/> no | Has the municipal attorney researched legal ramifications for your municipality? |
| | | <input type="checkbox"/> yes <input type="checkbox"/> no | Developed contract language which requires Y2K compliance for all new equipment and software purchases? |
| | | <input type="checkbox"/> yes <input type="checkbox"/> no | Updated or developed disaster recovery plans? |
| | | <input type="checkbox"/> yes <input type="checkbox"/> no | Developed a citizen education plan to minimize public panic? |

As a municipal official, you are expected to look out for your community as a whole, not just the operations of local government. Many of the potential impacts of the Year 2000 computer problems may be due to failures in local or other businesses or other levels of government. A good first step is to set up a special task force to focus on this issues. AML has prepared an example of a resolution creating such a task force for your community to identify critical operations and make sure appropriate measures are being taken.

DRAFT MODEL RESOLUTION

**A Resolution Establishing the (Name of Municipality) "Y2K" Task Force
To Ensure that Private and Public Sectors of (name of municipality) Take Immediate Coordinated
Actions to Avoid Negative Impacts on the Local Economy and
Public and Private Services Resulting from the Year 2000 Computer Problem**

Whereas, it is a basic governmental responsibility to ensure public safety, and the continuous delivery of both public and private services.

Whereas the Year 2000 Computer Problem, known as the "Y2K" Problem, is simply the predicted failure of some computers to recognize the difference between the year 1900 and the year 2000, causing the failure of some systems operated by computers.

Whereas, these failures may occur on or before January 1, 2000, approximately ___ days from now.

Whereas the President of the United States, the Governor of Alaska, the National Association of Counties, the National League of Cities, and others have declared the Y2K Problem as a major potential threat to our local economies, and public and private services.

Whereas, the U.S. operates on approximately 25 billion computer "chips", and experts estimate that 1% to 2% (250 to 500 million) of those computer chips will cause failure in the systems they operate.

Whereas, computer chips are found in key systems like computers, navigational equipment, electric switches and pumps, transportation equipment, environmental controls, banking and monetary systems, communications systems, health systems, etc.

Whereas, the Y2K Problem is a nationwide, state-wide, and community-wide problem because most key systems are interconnected and interdependent. This issue is greater for Alaskan communities because of a greater dependence on transportation and communications systems to ensure the continued safe operation of our communities.

Whereas, one undiscovered Y2K problem in a community, or in a non-local business or system serving a community, can cause the failure of many other systems and services. For example, the failure of one utility system, or a transportation system, in the dead of winter (i.e. January 1, 2000) can cause a public safety crises and the virtual shut down of commerce.

Whereas, the Y2K Problem is primarily an executive and management problem because the solution is dependent upon executives and local elected officials recognizing the Y2K Problem a top priority, and allocating the necessary financial and staff resources now.

Now therefore be it resolved by (name of your municipal governing body) that:

1. The (name of your municipality) **Y2K Task Force** is hereby created with the following membership: (please modify for each community):

- two members of the council/assembly;
- one member appointed by the school board;
- two business executives/owners appointed by the Chamber of Commerce;
- one utility manager or board member appointed by the council/assembly;
- one transportation manager or board member appointed by the council/assembly;
- one health service manager or board member appointed by the council/assembly;
- one state or federal agency manager appointed by the council/assembly.

2. The Y2K Task Force will be supported by the City Manager/Administrator and designated staff.

3. The charge of the Y2K Task Force is as follows:

- a. Hold public hearings and meetings to explain the Y2K Problem and **determine which local and non-local systems are key to the local economy, major public services, and public safety.** Such systems include utilities, key public safety and health systems, transportation systems, communications systems, banking systems, etc.
- b. **Contact operators and owners of key systems** to request a status report on their Y2K activities and to gain their future cooperation.
- c. Develop a monthly **community status report on Y2K testing, compliance and readiness** of key public and private services.
- d. Research information and assistance resources, and **share information.**
- e. Identify which key systems may be subject to failure and how the community would deal with such system failures as part of the **community disaster emergency response plan.**

CONGRESSIONAL CITY CONFERENCE '99

The 1999 Congressional City Conference will be held in Washington, DC from March 5-9. Take the opportunity to meet with local officials from across the country to share ideas and work together on behalf of your constituents. Learn about Congressional and Administration priorities, help shape NLC's voice on federal issues, and share your perspectives with people who make key federal decisions.



ANNUAL CONGRESSIONAL CITY CONFERENCE

Washington Hilton Hotel and Towers
March 5-9, 1999
Washington, D.C.

For more information, write or call
National League of Cities
1999 Congressional City Conference
1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 626-3105

FISCAL NOTE

Bill Version: HB 57
 (H) Publish Date: 1/22/98

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to immunity for certain claims against the state or a municipality arising out of or in connection with the year 2000 (Y2K) date change
 Sponsor: Rules
 Requestor: Governor

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 99) cost: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability exposure for consequential loss arising from the Y2K date change and what Risk Management might pay in future liability claims and defense costs will be reduced by this legislation.

Due to the uncertainty that future Y2K claims will even occur, the extent of such savings is not possible to forecast. The immunity provisions should preclude legal actions – thereby reducing future defense costs at the very least.

The state funds its liability coverage provided through Risk Management on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency. Future year liability premium assessments will reflect the cost reductions actually realized by this legislation as premiums are developed from actual claims expenses incurred.

No immediate negative fiscal impact can be shown due to outstanding unfunded liabilities.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 10/28/98

TONY KNOWLES
GOVERNOR

HB 57
P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3531

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 1999

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Brian
Dear Speaker Porter:

As part of the state's thorough efforts to prepare for the transition into a new millennium, I am transmitting this bill to protect the state and municipalities from liability claims for damages in connection with year 2000 (Y2K) computer software and processor failures.

This bill is not meant to interfere with an individual's right to receive statutorily mandated services or entitlements. In the event of an error associated with the Y2K date change, that individual will continue to have recourse through administrative procedures to rectify the error. However, as explained in the findings, the magnitude of preparations for Y2K is unprecedented in the relatively young world of computer technology. Although the state and local governments are working diligently to smoothly transition their computer systems into the year 2000, it may be expected that, despite these best efforts, some failures might occur. Under this bill, the state, municipalities, and their agents would be immune from liability for certain damages arising before the year 2006.

Meanwhile, I can assure the Legislature and the public the state of Alaska is taking extensive efforts to attempt to make our move into the twenty-first century one without interruptions in public services.

Sincerely,

Tony Knowles
Tony Knowles
Governor

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

February 17, 1999

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

The Honorable Pete Kott, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, AK 99801

Dear Chair:

I respectfully request that you schedule a hearing on HB 57 "An Act relating to immunity for certain claims against the state, a municipality, or agents, officers, or employees of either, arising out of or in connection with the year 2000 date change; and providing for an effective date" as soon as possible.

HB 57 provides that an action for damages may not be brought against the state, a municipality, or the agents, officers, or employees of either, for electronic computing device failures associated with the Y2K date change.

This bill applies to all actions for damages arising from any failure that occurs after the effective date of the bill, and before January 1, 2006. The bill is not intended to interfere with an individual's right to receive statutorily mandated services or entitlement from these entities. If an error associated with the Y2K date change is made, an individual will continue to have recourse through administrative procedures to correct the error.

Enclosed you will find a copy of a synopsis of all state jurisdictions that either have legislation pending, or have passed legislation to deal with the Y2K liability situation.

I appreciate your consideration of an early hearing on this proposed legislation. If you have any questions please contact me at 465-2200 or Brad Thompson at 465-5723.

Sincerely,



Robert Poe, Jr.
Commissioner

RP/JH/jd

cc: Pat Pourchot, Legislative Director
Office of the Governor

Brad Thompson, Director, Division of Risk Management
Department of Administration

ITAA's Year 2000 Home Page

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Y2K State Legislation - Pending

As part of ITAA's specially-funded State Initiative Program, our partner, Stateside Associates monitors each of the 50 states with respect to Y2K Legislation. Where possible, the individual bill is hyperlinked directly to the state legislature. For further information, contact ITAA or Stateside. This table is updated frequently, however, if you know of something we are missing, please [contact us](#).

BILL/AUTHOR	SUMMARY	CURRENT STATUS
ALASKA		
<p><u>H.B. 57</u> <i>Rules at request of the Governor</i></p>	<p>Provides that an action may not be brought against the state or municipality, or agent officer, or employee of the state or municipality for an act or omission occurring in the scope of that person's employment or work for the state or municipality, for damages caused directly or indirectly by a failure, in connection with the Year 2000 date change, of an electronic computing device owned, controlled, or operated by others. Pertains to actions bought before January 1, 2007.</p>	<p>Introduced and referred to House Judiciary Committee January 22. Hearing February 4. Passed Community and Region Affairs Committee February 5. Sent to Judiciary Committee.</p>

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 Menlo Park, CA 94025
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 (650) 859-3466 (fax)

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<p><u>H.B. 82</u> <i>Representative Norman Rokeberg (R)</i></p>	<p>Provides immunity for all businesses for damages caused directly or indirectly by a computer failure in connection with the Year 2000 date change unless: (1) the business has more than 11 employees and; (2) the plaintiff shows through a preponderance of the evidence that the business failed to use due diligence or good faith efforts to avoid Year 2000 damages. Effective immediately.</p>	<p>Introduced and referred to House Labor and Commerce and Judiciary Committees February 5.</p>
<p><u>S.B. 37</u> <i>Senate Rules Committee</i></p>	<p>Provides that an action may not be brought against the state or municipality, or agent officer, or employee of the state or municipality for an act or omission occurring in the scope of that person's employment or work for the state or municipality, for damages caused directly or indirectly by a failure, in connection with the Year 2000 date change, of an electronic computing device owned, controlled, or operated by others. Pertains to actions brought before January 1, 2007.</p>	<p>Introduced and referred to Senate Judiciary Committee January 21.</p>
<p>ARIZONA</p>		
<p><u>S.B. 1057</u> <i>Senator John Wettaw (R)</i></p>	<p>Prohibits foreclosure, default, or taking other adverse or enforcement action against a person who fails to accurately or timely process any information, data, payment or transfer if the failure: (1) is due directly or indirectly to the failure or malfunction of a computer processor to accurately or properly recognize, compute, display, sort or process dates or times; and (2) arises out of or in connection with a Year 2000 date change.</p>	<p>Introduced January 14. Referred to Senate Financial Institutions and Retirement Committee and Rules Committee January 18.</p>

	<p>Prohibits taking adverse or enforcement action against any person or entity that fails to make a timely payment or complete other financial transactions if the failure is due, wholly or in part, to the inability of either party to make the necessary payments, fund transfers or checking or other financial transaction or to access the necessary data or information. This section does not affect transactions in which default occurred before any disruption of financial or data transfer operations arose in connection with the Year 2000 date change. This section applies to at least the following: (1) mortgages; (2) contracts; (3) landlords and tenants, (4) consumer credit obligations; (5) utilities; (6) banking and other financial transactions; (7) tangible or intangible property. Prohibits taking enforcement action before the obligor's ability to regularly receive and dispense financial transactions has been fully restored.</p>	
<p><u>S.B. 1294</u> <i>Senator Marc Spitzer (R)</i></p>	<p>Enacts an emergency measure establishing affirmative defenses against liability suits based upon a device's inability to accurately process date information and extending qualified immunity to public entities and employees for injuries related to such problems in relation to Year 2000 failures. This legislation applies to actions in which a person or governmental entity seeks damages or other relief based on a Year 2000 failure or actions that are based on an alleged failure to properly detect, disclose, prevent, report or remedy a Year 2000 failure. Allows</p>	<p>Introduced and referred to Senate Judiciary Committee February 2. Reported from Committee as amended and referred to Senate Rules Committee February 9.</p>

the following affirmative defenses against a Y2K date failure lawsuit: 1) that a defendant must notify a buyer of potential Y2K failure and unconditionally offer a free replacement, repair, upgrade, update, alternative service or instructions to be implemented to solve the Y2K problem; 2) that a defendant reasonably relied on a false or misleading Y2K statement, from any person, that what defendant passed on did not have a Y2K problem; 3) that a defendant or governmental agency conducted a reasonable examination to determine if there was a Y2K problem and that the defendant must have in good faith effected any necessary repair, upgrade or update that passed the defendant's testing procedures. This legislation applies to services as well as products, and controls if in conflict with current product liability laws. It does not apply to worker's compensation cases. Requires the plaintiff to give defendant 90 days notice of impending lawsuit with reasonable detailed description of Y2K problem giving defendant opportunity to inspect and cure the problem. Prevents discovery from being sought until 90 days has expired. This notice requirement is waived if impossible because of a statute of limitations, or if not asserted as a direct claim, but notice still must be served within 30 days of commencing action in such cases. Ramifications of insufficient notice are specified. Allows court to deduct from damages an amount equal to the value of any cure or rejected unconditional offer to cure. Establishes that the defendant has the burden of establishing the value of the cure or offered cure. Establishes that an offer to cure may not be used

	<p>against the defendant to establish liability. Prevents plaintiffs from using defendant's Y2K remedial measures to prove negligence, culpable conduct, defectiveness or unreasonable danger. However, other independent sources may be used to make any of these showings. Remedial measures include modifications, changes in quality assurance procedures and training, termination of employees, warnings, recall, creation of a Y2K avoidance plan, alternative services or any action taken to lessen the likelihood of Y2K consequences. Extends qualified immunity to public entities and employees for Y2K related injuries, without affecting entitlement claims. Contains an emergency clause.</p>	
<i>COLORADO</i>		
<p><u>H.B. 1136</u> <i>Representative Ron Tupa (D)</i></p>	<p>Extends the Governmental Immunity Act to cover all claims against a public entity for injury arising from the failure of electronic computing devices to correctly interpret, produce, calculate, generate or account for a date that is compatible with the year 2000 date change. Defines electronic computing device as "any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that is used to capture, store, manipulate or process data or controls, monitors, or assists in the operation of a physical apparatus.</p>	<p>Introduced and referred to House Judiciary Committee January 11. Failed in Committee January 27.</p>
<p><u>H.B. 1190</u></p>	<p>Limits the liability of</p>	<p>Introduced and</p>

<p><i>Representative Tambor Williams (R)</i></p>	<p>financial service providers in civil actions relating to a Year 2000 problem to actual damages. Exempts provider from punitive damages where the claim is based upon a Year 2000 problem or a computer system failure resulting from a Year 2000 problem. Declares a provider may be found liable to its customers but not to persons not in privity of contract with the provider for civil damages resulting from acts, omissions, decision or other conduct in connection with a Year 2000 problem. Establishes an affirmative defense for financial providers in any claim, action or proceeding alleging liability based upon a Year 2000 problem if the provider has complied with all regulations and requirements relating to a Year 2000 problem compliance.</p>	<p>referred to House Judiciary Committee January 13.</p>
<p><u>H.B. 1295</u> <i>Representative Tambor Williams (R)</i></p>	<p>Establishes the Year 2000 Liability Act of 1999. Applies to civil actions for damages arising from a Year 2000 failure of an electronic computing device. Defines the term "electronic computing device". Defines the term Year 2000 failure as the failure of an electronic computing device to correctly interpret, produce, calculate, compute, generate, compare, account for, process, or sequence a date that is compatible with the year 2000 date change. Limits liability in actions to actual damages. Limits liability to customers and cuts off the remedies of persons who are not in privity of contract with the defendant. Establishes an affirmative defense for any business, or any director, officer, or employee of such business, who makes reasonable efforts to identify the potential for a</p>	<p>Introduced and referred to House Business Affairs and Labor Committee January 27. Hearing scheduled for February 11.</p>

	<p>Year 2000 failure and who attempts to correct or otherwise avert such failures. Adds to the list of confidential functions of the compliance review committee of a financial institution the duty to seek to improve the ability of electronic computing devices to account for the Year 2000 date change. Establishes a one-year statute of limitations for civil actions arising out of a Year 2000 failure associated with the Year 2000 date change.</p>	
<p><u>S.B. 170</u> <i>Senator Terry Phillips (D)</i></p>	<p>February 3 amendment language not yet available. Prohibits person or entities from initiating any foreclosure proceeding, default or other adverse action against a person due to the failure of an electronic computing device to compute, recognize, or timely process the Year 2000. States: "A credit reporting agency operating in this state shall not report any negative credit information resulting, in whole or in part, from the failure of an electronic computing device to process financial information and other information or the inability of the consumer to transact financial business and make payments due to the failure of an electronic computing device to compute, recognize, or timely process the Year 2000 date change."</p>	<p>Introduced and referred to Senate Business Affairs and Labor Committee January 22. Hearing held February 3. Amended, reported and referred to House Appropriations Committee February 3.</p>
CONNECTICUT		
<p><u>H.B. 5995</u> <i>Representative Melody Currey (D)</i></p>	<p>Provides immunity to municipalities for negative impacts from Year 2000 problems</p>	<p>Introduced and referred to Joint Planning and Development Committee January 21, 1999.</p>

<p><u>S.B. 592</u> Senator Stephen R. Somma (R)</p>	<p>Requires the offer of liability insurance to cover business losses caused by the Year 2000 computer problem.</p>	<p>Introduced and referred to Joint Insurance and Real Estate Committee January 25.</p>
<p>DISTRICT OF COLUMBIA</p>		
<p><u>Bill 12-732</u> Councilmember Kathy Patterson (D)</p>	<p>Immunizes the government of the District of Columbia against lawsuits pertaining to Year 2000 equipment failures. Provides limited liability to government vendors whose Y2K failure is associated primarily with government-owned equipment. Government vendors would be held liable for damages stemming from a Y2K failure, and would offer a warranty stating that their goods and services are Y2K compliant.</p>	<p>Approved by Council December 15, 1998,</p>
<p>FLORIDA</p>		
<p><u>S.B. 80</u> Sen. John Grant (R)</p>	<p>Defines scope of liability that person, businesses and government agencies face for damages caused by Year 2000 information technology failure. Defines business as any person or entity engaged in the state in providing goods or services but does not include government agency. Allows for compensatory damages and punitive damages of three times the amount of compensatory damages caused by intentional or grossly negligent misrepresentation that a business is Year 2000 compliant. Allows for recovery in class actions filed after January 1, 2000, except those against manufacturers or vendors</p>	<p>Prefiled October 8 for introduction in 1999 legislative session. Referred to the Commerce and Economic Opportunities Committee November 10.</p>

	<p>of information technology products, only for class members which have incurred damages in excess of \$50,000. Imposes insurance and warranty requirements on persons who undertake to perform assessments of Year 2000 compliance. Removes the waiver of sovereign immunity for damages caused by gross negligence of governmental agencies. Provides for immunity from liability for officers and directors of businesses if they have in good faith and with due diligence received an assessment as to Year 2000 compliance and informed necessary parties who may be effected by result of failure by September 1, 1999.</p>	
GEORGIA		
<p><u>H.B. 221</u> <i>Representative George Grindley (R)</i></p>	<p>Limits the liability of computer product suppliers that make available solutions to Year 2000 computer problems. Establishes that any supplier of a computer product which fails or malfunctions due to being Year 2000 fails to make available solutions to any such problems, such action shall be considered a claim for breach of contract.</p>	<p>Introduced and referred to House Judiciary Committee January 26.</p>
HAWAII		
<p><u>H.B. 1105</u> <i>Representative Calvin K.Y. Say (D)</i></p>	<p>February 4 amendments forthcoming. Amends the Year 2000 immunity provisions established. Extends the time frame covered by the immunity for government computer systems beyond June 30, 1999.</p>	<p>Introduced and referred to House Judiciary and Hawaiian Affairs Committee January 28. Public hearing held February 4. Reported from Committee as amended February 4. Referred to House Finance Committee</p>

		February 4.
<p><u>H.B. 1111</u> <i>Representative Calvin K.Y. Say (D)</i></p>	<p>February 4 amendments forthcoming. Provides protections for persons who exercise commercially responsible efforts to identify and find solutions for computer-based systems that may be affected by Year 2000 errors.</p>	<p>Introduced and referred to House Judiciary and Hawaiian Affairs Committee January 28. Public hearing held February 4. Reported from Committee as amended February 4. Referred to House Finance Committee February 4.</p>
<p><u>H.B. 1112</u> <i>Representative Calvin K.Y. Say (D)</i></p>	<p>Working title is "Relating to claims against the government based on Year 2000 errors by computer-based systems." Language is not yet available.</p>	<p>Introduced and referred to House Judiciary and Hawaiian Affairs Committee January 28.</p>
<p><u>S.B. 757</u> <i>Senator Richard Matsuura (D)</i></p>	<p>Provides immunity to private persons or businesses from suits arising out of failure or error from a computer system after June 30, 1999 as a result of the system not being Year 2000 compliant.</p>	<p>Introduced and referred to Senate Commerce and Consumer Protection Committee January 25. Rereferred to Senate Commerce and Consumer Protection and Education and Technology Committees February 1. Joint public hearing scheduled February 10.</p>
<p><u>S.B. 1313</u> <i>Senator Norman Mizuguchi (D)</i></p>	<p>Amends the current Year 2000 immunity provisions. Prohibits actions against the state, its political subdivisions, a board or a government employee</p>	<p>Introduced and referred to Senate Education and Technology Committee January 28.</p>

	<p>arising out of or relating to a Year 2000 error by a government computer system. Does not apply to deliberately tampering with a government computer system for the purpose of causing the system to produce a Year 2000 error or immediately returning a benefit arising from a Year 2000 error. Extends the time frame covered by the immunity for government computer systems to beyond June 30, 1999.</p>	
<p><u>S.B.1319</u> <i>Senator Norman Mizuguchi (D)</i></p>	<p>Working title is "relating to claims against the government based on Year 2000 errors by computer-based systems." This is a short-form bill and language is currently unavailable.</p>	<p>Introduced and referred to Senate Education and Technology Committee January 28.</p>
<p><u>S.B. 1320</u> <i>Senator Norman Mizuguchi (D)</i></p>	<p>Provides protection for persons who exercise commercially reasonable efforts to identify and find solutions for computer-based systems that may be affected by Year 2000 errors.</p>	<p>Introduced and referred to Senate Commerce and Consumer Protection Committee January 28. Rereferred to Senate Commerce and Consumer Protection and Education and Technology Committees February 1. Joint public hearing scheduled for February 10.</p>
<p><u>S.B. 1598</u> <i>Senator Marshall Ige (D)</i></p>	<p>Prohibits foreclosures, defaults or adverse action on various financial transactions and prohibits adverse or enforcement action on these matters as a result of Year 2000 problems. Prohibits negative entries in credit reports.</p>	<p>Introduced and referred to Senate Education and Technology Committee February 3. Rereferred to Senate Commerce and Consumer Protection and</p>

		Education and Technology Committees February 2. Joint public hearing scheduled February 10.
ILLINOIS		
<i>H.B. 487</i> <i>Representative Constance Howard (D)</i>	Creates the Year 2000 Citizens' Protection Act. Prohibits a person or entity from initiating any foreclosure proceeding, default, or other adverse action in certain matters, or initiating any adverse or enforcement action or negative credit reporting against any person who fails to or who is unable to cause payment, acts, forbearance, or other financial transactions to occur in a timely manner if the failure to make payments or take other action is due to the failure of an electronic computing device to compute, recognize, or timely process the Year 2000 date change. Contains provisions concerning applicability, exceptions, and conflicts with other laws. The Act is repealed on January 1, 2007. Effective immediately.	Introduced February 2. Referred to House Computer Technology Committee February 3. Hearing scheduled February 11.
INDIANA		
<i>H.B. 1559</i> <i>Rep. John Frenz (D)</i>	Grants immunity to the state of Indiana, a political subdivision, and any employee of the state or a political subdivision from tort and contract liability that is caused by an error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date that is produced, calculated, or generated by	Introduced and referred to House Judiciary Committee January 19.

	a computer, an information system, or equipment using microchips.	
<u>S.B. 94</u> <i>Sen. Luke Kenley (R)</i>	Grants immunity to the state, its political subdivisions and employees from computer errors, and would require state and local contracts to include provisions granting immunity to the state for breach of contract resulting from an incorrect date being produced, calculated, or generated by a computer or other information system. January 21 Amendments add June 30, 2003 sunset date to the act.	Prefiled December 8 for 1999 legislative session. Referred to Senate Corrections, Criminal and Civil Procedures Committee January 5. Amended and reported from Committee January 21. Passed Senate January 26.
<u>S.B. 666</u> <i>Senator Teresa Lubbers (R)</i>	Limits class action lawsuits related to Year 2000 problems to: (1) classes in which each member has damages exceeding \$50,000; or (2) cases in which the defendant is a manufacturer or vendor of a product that inaccurately processes date data and were previously represented as Year 2000 compliant. Specifies that an exchange in good faith of information related to Year 2000 problems is not an unlawful restraint of trade. Gives officers and directors of businesses immunity from civil liability resulting from a Year 2000 problem if the business exercised due diligence in mitigating Year 2000 liability. Gives creditors and fiduciaries immunity from civil liability resulting from the failure of a business to exercise due diligence or to be Year 2000 compliant. Specifies that the damages available in a civil action involving a Year 2000 problem are limited to the damages allowed by a contract applicable to the person incurring the loss or	Introduced and referred to Senate Judiciary Committee January 22.

	compensatory damages for pecuniary losses. Prohibits punitive damages in a cause of action related to a Year 2000 problem. Provides for arbitration and mediation of disputes related to a Year 2000 problem.	
IOWA		
<i>L.S.B. 1083</i> <i>Rep. Libby Jacobs (R)</i>	Relates to Year 2000 liability for the public and private sector. Text not available.	Prefiled September 30 for introduction in 1999.
KANSAS		
<i>H.B. 2185</i> <i>Representative Michael R. O'Neal (R)</i>	Provides that suits resulting from Year 2000 damages can only be brought against "any individual, proprietor, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other group of persons acting in concert who provides services to a customer through the use of a computer system" as individual actions which are based solely and exclusively in contract to the exclusion of all other causes of action. Further provides that, if brought, the suit shall only allow recovery of actual damages. Further provides conditions which defendant must have met to be eligible for such immunity. Conditions include: the defendant provided customer notification; that no personal injury has been caused to the plaintiff; that the defendant made good faith efforts; that the defendant tested its systems via date change simulation no later than	Introduced and referred to House Judiciary Committee January 29.

	<p>September 1, 1999; that the defendant prepared a contingency plan prior to October 1, 1999; and that the defendant has or will implement applicable portions of the contingency plan as necessary within 60 days of receiving notice of a problem from a client or customer. Further provides that the state of Kansas and its political subdivisions shall not have liability for any individual or class action suits brought against it for damages resulting from the Year 2000 date failure. Effective upon enactment.</p>	
<p><u>H.B. 2281</u> <i>Special Committee on Information Management</i></p>	<p>Provides immunity from claims resulting from the Year 2000 date change to governmental entities and their employees. Further provides that the sole remedy for indirect or consequential damages resulting from Year 2000 date changes shall be the right to file a claim on the disputed damages with the joint committee on special claims. Provides that this Act does not interfere with contractual rights and further provides that "if a governmental entity or contractor fails to perform contractual obligations due to computational or interpretive errors associated with the Year 2000 date change, the remedies available to the parties shall be as set forth in the written contract." Further provides that this Act does not interfere with the right to receive statutorily mandated services, and provides that actions to rectify the failure to receive such services shall be "the existing administrative procedures or remedies provided by law".</p>	<p>Introduced and referred to House Judiciary Committee February 8.</p>
<p>MAINE</p>		

<p><i>L.R. 1095</i> <i>Representative Jay MacDougall (R)</i></p>	<p>Assists Maine small manufacturing firms to implement Year 2000 assessments.</p>	<p>Prefiled December 18, 1998 for 1999 session.</p>
<p><i>L.R. 1961</i> <i>Sen. Robert Murray (D)</i></p>	<p>Clarifies the liability of financial institutions relating to the Year 2000 "bug."</p>	<p>Prefiled December 18, 1998 for 1999 session.</p>
<p>MARYLAND</p>		
<p><u><i>H.B. 8</i></u> <i>Del. Casper Taylor (D)</i></p>	<p>Creates the Year 2000 Commerce Protection Act, which establishes remedies for Maryland government, businesses, commerce, and consumers for damages caused by the failure of information technology products because of certain date data. Provides that the exclusive remedy for harm caused by a failure to be Year 2000 ready is in contract or, otherwise, as provided in this new subtitle. Provides that failure to be Year 2000 ready must be proximate cause of harm. Establishes, as an affirmative defense, that a person complied with standards of Section 2-405.1 of the Corporations Title. Lists factors for consideration in determining such compliance. Immunizes officers or directors from liability if in compliance with Section 2-405.1. Provides that Year 2000 readiness exchanges of information are not in restraint of trade.</p>	<p>Introduced and referred to Judiciary Committee January 13.</p>
<p><u><i>S.B. 232</i></u> <i>Senator Patrick Hogan (R)</i></p>	<p>Provides that a state or local government is immune from suit and liability for damages</p>	<p>Introduced and referred to Senate Judicial Proceedings</p>

	<p>arising out of the Year 2000 date change if the state or local government has: (1) published and made available for public comment a compliance plan; (2) Before October 1, 1999 adopted a compliance plan; (3) Before December 31, 1999 certified by the Chief Executive Officer, Chief Administrative Officer, or the designee of either officer, the implementation of the compliance plan. Provides immunity from suit for Year 2000 problems to employees of state and local government. Further provides that immunities set forth are in addition to any immunities or limits on liability otherwise available to state and local government.</p>	<p>Committee February 3.</p>
<p><u>S.B. 554</u> <i>Senator Richard Colburn (R)</i></p>	<p>Establishes remedies for Maryland government, business, commerce, and consumers for damages caused by the failure of information technology products because of the Year 2000 date change. Provides for damages under specified circumstances, specified defenses, and limitations on liability.</p>	<p>Introduced and referred to Senate Judicial Proceedings Committee February 9.</p>
MASSACHUSETTS		
<p><i>H.B. 2651</i> <i>Representative Philip Travis (D)</i></p>	<p>Provides that no cause of action, including, without limitation, any civil action or action for declaratory or injunctive relief, may be brought against the commonwealth, its employees, and its political subdivisions on the basis that a computer or other information system generated or calculated an incorrect date as a result of the Year 2000 date change. Further provides that such</p>	<p>Introduced and referred to House Science and Technology Committee January 6.</p>

	<p>failures must have been unforeseeable or that a "plan or design established to identify and prevent such 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."</p>	
<p><i>H.D. 1780</i> <i>Rep. Philip Travis (D)</i></p>	<p>Relates to Year 2000. Bill text is currently unavailable.</p>	<p>Prefiled for introduction in 1999 session. Replaced by H.B. 2651.</p>
<p><i>H.D. 3842</i> <i>Rep. Paul C. Casey (D)</i></p>	<p>Relates to Year 2000 failure of hospital and health systems. Bill text is currently unavailable.</p>	<p>Prefiled December 2 for introduction in 1999.</p>
<p><i>S.B. 503</i> <i>Sen. Marc R. Pacheco (D)</i></p>	<p>Provides that no hospital, health system, or any of its employees, directors, shareholders, representatives or agents thereof, shall have personal or corporate liability for losses from any failure or malfunction occurring between September 30 ,1999, and December 31, 2005, which is caused directly or indirectly by the failure of computer software or a device that contains computer processing capabilities. Further provides that any contract entered into by a group insurance commission, the Division of Medical Assistance, the Division of Health Care Finance and Policy, and policy of accident or sickness insurance, a non-profit hospital service corporation, a medical service corporation, HMO, or PPO to a health care provider must include a</p>	<p>Prefiled December 2 for introduction in 1999. Introduced and referred to Science and Technology Committee January 6.</p>

	provision that provides immunity to said provider, hospital or health system for any breach of contract that is caused by a system failure related to the Year 2000 problem. Applicable to contracts executed after the effective date of the Act.	
<i>S.B. 504</i> <i>Sen. Marc R. Pacheco (D)</i>	Amends current law to include Internet, mail, and fax communications, as well as telephone communications, in the definition of harassing, annoying or molesting communications.	Prefiled December 2 for introduction in 1999. Introduced and referred to Science and Technology Committee January 6.
<i>S.B. 834</i> <i>Sen. Brian P. Lees (R)</i>	Prohibits any cause of action, including, without limitation, any civil action or action for declaratory or injunctive relief, from being brought against the Commonwealth, its employees and political subdivisions on the basis that a computer or other information system owned or operated by any of those persons produced, calculated, or generated an incorrect date as a result of the Year 2000 date change.	Prefiled for introduction in 1999 session. Introduced and referred to Senate Science and Technology Committee January 6.
MINNESOTA		
<u><i>H.F. 73</i></u> <i>Rep. Bill Hilty (D)</i>	Provides immunity to state agencies, associations and their members from Year 2000 computer, software and semiconductor problems. Appropriates \$20 million in loans from the general fund for school districts, counties, cities and towns to meet costs incurred in addressing Year 2000 problems. Requires repayment of loans to be made in five equal annual payments one year after receipt.	Introduced and referred to House Local Government and Metropolitan Affairs Committee January 11. Reported from committee as amended January 25. Referred to Senate Judiciary Committee January 25. Reported from Committee with amendments

	<p>Appropriates \$5.5 million from the general fund for modification of state business systems to address Year 2000 changes. Makes appropriation contingent upon a determination by the commissioner of administration that all other money has been expended. Defines association as any trade, professional, or similar organization the members of which are engaged in similar lines of business. January 28 amendments added local government immunity.</p>	<p>January 28. Referred to Senate Health and Family Committee January 28. Reported from Committee as amended February 1. Referred to Senate Job Energy and Community Development Committee February 1.</p>
<p><u>S.F. 2</u> <i>Sen. Steve Kelley (DFL)</i></p>	<p>Provides immunity to state agencies, associations and their members from Year 2000 computer, software and semiconductor problems. Appropriates \$20 million in loans from general fund for school districts, counties, cities and towns to meet costs incurred in addressing year 2000 problems. Requires repayment of loans must be made in five equal annual payments one year after receipt. Appropriates \$5.5 million from general fund for modification of state business systems to address Year 2000 changes. Makes appropriation contingent upon a determination by the commissioner of administration that all other money has been expended. Defines association as any trade, professional, or similar organization the members of which are engaged in similar lines of business.</p>	<p>Introduced and referred to Senate Local and Metropolitan Government Committee January 4.</p>

<p><u>S.F. 299</u> <i>Senator Steve Kelley (DFL)</i></p>	<p>Limits the liability of the state and municipalities for certain claims involving Year 2000 problems. Provides protection to the state and municipalities from claims if they have identified the Year 2000 problem, made reasonable efforts to correct the problem and filed a disclosure of the potential problem with the Department of Administration by July 1, 1999. Provides that a Year 2000 claim can not be made against the state or a municipality until September 1, 2000.</p>	<p>Introduced and referred to Senate Judiciary Committee January 25.</p>
MISSISSIPPI		
<p><u>H.B. 658</u> <i>Rep. Norma Bourdeaux (D)</i></p>	<p>Exempts state and political subdivisions from liability from computer malfunctions resulting from the Year 2000 date change.</p>	<p>Introduced and referred to House Judiciary A committee January 6.</p>
<p><u>S.B. 2091</u> <i>Sen. Terry C. Burton (D)</i></p>	<p>Provides tort immunity from Year 2000 computer failures for governmental entities and their employees acting within the course and scope of their employment or duties. Further directs state agencies to take all necessary steps to insure that there is no disruption of critical services because of the Year 2000 date change.</p>	<p>Prefiled December 17 for introduction in 1999. Referred to Judiciary Committee January 5. Died after failing to meet February 2 Committee reporting deadline.</p>
<p><u>S.B. 2143</u> <i>Senator Jim Bean (R)</i></p>	<p>Revises eligibility and services reimbursement for Medicaid assistance program. Committee substitute adopted January 27 adds a section requiring the Division of Medicaid and its fiscal agent to develop a contingency plan for reimbursement</p>	<p>Introduced and referred to Senate Public Health and Welfare Committee January 5. Committee substitute adopted January 27. Passed Senate, as</p>

	and eligibility verification to be used in the event of problems associated with the Year 2000 date failure. Specifies information to be included in the contingency plan.	amended, February 9.
MONTANA		
<u>B.D.R. 709</u> <i>Rep. Larry Grinde (R)</i>	The short title is "Revise laws to address Year 2000 liability." Language is not yet available.	Prefiled November 24 for 1999 session.
<u>S.B. 16</u> <i>Sen. Bob Keenan (R)</i>	Prohibits an action to be taken against a governmental entity based on any failure or error that results directly from the millennium bug and occurs before January 1, 2005. Unless otherwise agreed between parties, an action brought against a defendant other than a government entity must be in contract as long as the plaintiff did not suffer bodily harm and the defendant took the following measures prior to the date of failure: (a) made repair or replacement for an electronic computing device available free of charge; (b) notified the plaintiff by mail if the plaintiff is a registered buyer of the electronic computing device or any component of it that experiences the effects of the millennium bug. If the defendant could not notify the plaintiff who is registered by mail, or if the plaintiff is not a registered buyer, the defendant must have given notice by publication in the county when the plaintiff resides. If the defendant maintains a website, the notice must be posted on the site, which must be registered with at least five major search engines.	Introduced December 3, 1998 for 1999 session Referred to Senate Judiciary Committee December 12. Public hearing held January 11.

NEBRASKA		
<p><u>L.B. 160</u> <i>Sen. Pam Brown (I)</i></p>	<p>Limits governmental liability for damages relating to electronic computing devices. States that "if a governmental entity's contractor's failure to perform contractual obligations is due to computational or interpretive error associated with the Year 2000 date change, the remedies available to the parties shall be set forth in the contract."</p>	<p>Introduced and referred to Judiciary Committee January 8.</p>
<p><u>L.B. 254</u> <i>Sen. Doug Kristensen(I)</i></p>	<p>Limits governmental liability for harm caused by incorrect dates by a computer or information system by prohibiting "any claim based upon calculation of an incorrect date by a computer or other information system owned or operated by the political subdivision or a contractor for the political subdivision, regardless of the cause of the error." Provides immunity for the government contractors as well.</p>	<p>Introduced January 11. Awaiting committee referral.</p>
<p><u>L.B. 282</u> <i>Sen. Elaine Stuhr (I)</i></p>	<p>Changes political subdivision and state immunity provisions relating to government computer systems. Provides immunity from civil action rising from "any claim based upon failure of or error produced, calculated, or generated by a government computer system in connection with the Year 2000 date change. Does not provide immunity for contractors.</p>	<p>Introduced January 11. Awaiting committee referral.</p>

<p><u>L.B. 661</u> <i>Sen. Doug Kristensen (I)</i></p>	<p>States that "the only damages in a civil action for damages resulting directly or indirectly from a computer date failure shall be actual damages based in contract if (1) the defendant has made all reasonable efforts to protect its computer systems, programs, or software from computer failure or error or (2) the defendant has complied with federal guidelines, rules, or regulations applicable to the defendant to protect against a computer date failure." Defines "computer date failure" as "the present or future inability of a computer system, program, or software to accurately store, process, provide, or receive data from, into, and between the years 1999 and 2000 and beyond."</p>	<p>Introduced and referred to Judiciary Committee January 20.</p>
<p><u>L.B. 699</u> <i>Senator Gene Tyson (I)</i></p>	<p>Provides immunity for governmental entities and their employees for damages caused in whole or part by the failure of, or computational or interpretative errors generated by, the Year 2000 date change. Stipulates that "if a contractor's failure to perform contractual obligations is due to an electronic computing device not being Year 2000 compliant, the remedies available to the parties shall be as set forth in the contract."</p>	<p>Introduced and referred to Judiciary Committee January 20.</p>
<p><u>L.B. 731</u> <i>Sen. Roger Wehrbein (I)</i></p>	<p>Provides for the funding of technology needs through the Rural Technology Development Act, including Year 2000 technology needs, for rural counties and localities. Stipulates that by January</p>	<p>Introduced and referred to the Government, Military and Veterans Affairs Committee January 25.</p>

	I, 2000, all political subdivisions covered by the act must have computer hardware and operating systems that are Year 2000 compliant.	
NEVADA		
<i>B.D.R. 1292</i> <i>Sponsor Unavailable</i>	Revises provisions regarding disclosure of privileged information during audits by insurance companies to determine compliance with state and federal laws regarding Y2K computer issues.	Prefiled December 15 for introduction in 1999.
NEW HAMPSHIRE		
<i>L.S.R. 365</i> <i>Rep. Naida L. Kaen (I)</i>	The short title is "Relative to criteria for reporting Year 2000 related computer problems and relative to limiting civil liability for Year 2000 computer related claims." Language is not yet available.	Prefiled December 17 for 1999 session.
<i>L.S.R. 757</i> <i>Rep. Neal M. Kurk (R)</i>	The short title is "affirming the sovereign immunity of the state in connection with state computers, software and computer programs." Language is not yet available.	Prefiled December 17 for 1999 session.
NEW JERSEY		
<i>A.B. 2511</i> <i>Assemblyman Michael J. Arnone (R)</i>	Provides civil immunity to public entities for damages resulting from, or caused directly or indirectly by, the failure of computer hardware or software or any device containing a computer processor to accurately or properly	Introduced and referred to Assembly Policy and Regulatory Oversight Committee October 5, 1998.

	recognize, calculate, display, sort or otherwise process dates or times.	
<u>A.B. 2666</u> <i>Assemblyman Joe Weingarten (R)</i>	Provides that an action, including one to recover damages, resulting from a Year 2000 computer date failure shall be based solely in contract when the defendant, or other responding party from whom liability is sought, used reasonable efforts to detect, disclose, prevent, report on or remedy a Year 2000 computer date failure.	Introduced and referred to Assembly Judiciary Committee November 23, 1998.
<u>S.E. 1421</u> <i>Sen. Leonard Connors (R)</i>	Provides that a public entity could not be held liable in any civil action for damages resulting from the failure of a computer system to accurately or properly recognize or calculate date or times.	Introduced and referred to the Senate Judiciary Committee October 15, 1998.
NEW YORK		
<u>S.B. 1218</u> <i>Senator John A. DeFrancisco (R)</i>	Enacts the year 2000 computer and information system liability act; provides immunity to the state of New York and any agency, department, or political subdivision, independent contractor of the state or employee or officer of the state from any civil liability for breach of contract caused by an incorrect date produced by a computer or information system.	Introduced and referred to the Senate Judiciary Committee January 19.
NORTH DAKOTA		
<u>H.B. 1037</u>	Amends North Dakota tort liability law to specifically	Introduced and referred to

<p><i>Information Technology Committee</i></p>	<p>prohibit claims against the state, any political subdivision of the state, or any employee of the state resulting from Year 2000 date change computer failures provided that 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.</p>	<p>Government and Veterans Affairs Committee January 5. Hearing held January 14. Reported from Committee February 2. Passed House February 3. Referred to Government and Veteran Affairs Committee February 4.</p>
<p><u>S.B. 2303</u> <i>Senator Jerry Klein (R)</i></p>	<p>Requires federally insured financial institutions or credit unions to make a good faith effort to make and implement a Year 2000 readiness plan and comply with the requirements of the financial institution's or credit union's primary federal regulator in order to be covered by this act. Requires that: (1) a claim for relief in connection with a Year 2000 disruption be commenced before January 1, 2001; (2) a federally insured financial institution or credit union may not be held liable to any person not in privity of contract with the financial institution or credit union for damages or other relief relating to a Year 2000 disruption; (3) if two or more parties contributed, the liability of each party responsible is several and each party is liable only for the amount of damages attributable to the percentage of responsibility of that particular party; and (4) a party claiming relief from a federally insured financial institution or credit union as a primary consequence of a Year 2000 problem may not be awarded punitive damages, consequential damages, extraordinary damages, noneconomic damages, or any other relief in excess</p>	<p>Introduced and referred to Industry, Business, and Labor Committee January 18. Reported from Committee February 3. Passed Senate February 4. Referred to Senate Industry, Business and Labor Committee February 9.</p>