

1999 ASSEMBLY BILL 19

January 14, 1999 – Introduced by Representatives SCHNEIDER, HAHN and LASSA.
Referred to Committee on Insurance.

1 **AN ACT to amend** 19.37 (2), 19.37 (3), 218.015 (7), 560.05 (3) and 775.01; and **to**
2 **create** 16.528 (3) (f), 66.285 (4) (f) and 893.83 of the statutes; **relating to:**
3 recovery of damages in actions against state and local governmental units and
4 officers, employes and agents thereof caused by the incorrect interpretation,
5 production or use of dates in the year 2000 and subsequent years.

Analysis by the Legislative Reference Bureau

Currently, under the common law doctrine of sovereign immunity, the state is immune from lawsuits, except in certain instances in which laws permit the state to be sued or the enforcement of a federal or constitutional right is involved. State authorities and local governmental units do not enjoy such broad immunity, although narrower grants of immunity are provided to such authorities and units under various specific laws. Also, in certain limited circumstances, a state governmental officer, employe or agent may be sued for certain acts or omissions even though a lawsuit arising from the same acts or omissions may not be brought against the governmental unit that the officer, employe or agent serves. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any such lawsuit based upon tort (a noncontractual claim based upon alleged wrongful conduct). Damages in tort lawsuits are generally limited to \$250,000 in the case of a state officer, employe or agent, or \$50,000 in the case of a local governmental unit or officer, employe or agent thereof. Currently, with certain exceptions, the state and local governments must pay interest on late payments to vendors.

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This bill provides that no person may recover any damages against any state or local governmental unit, including a state authority, or any officer, employe or agent thereof, for any act or omission caused by the failure of an electronic computing device that is under the control of such a unit, officer, employe or agent to recognize, process, distinguish or interpret the year 2000 or a subsequent year or the failure of an electronic computing device to produce, generate or calculate a correct date if the year 2000 or a subsequent year is a part of that date. The bill also provides that any contract entered into on or after the day on which the bill becomes law that contains a contrary provision is void. In addition, the bill provides that the state and local governments are not required to pay interest to vendors on late payments arising from a “year 2000” failure described above.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.528 (3) (f) of the statutes is created to read:

2 16.528 (3) (f) An order or contract to which s. 893.83 applies.

3 **SECTION 2.** 19.37 (2) of the statutes is amended to read:

4 19.37 (2) COSTS, FEES AND DAMAGES. (a) Except as provided in this paragraph
5 and s. 893.83, the court shall award reasonable attorney fees, damages of not less
6 than \$100, and other actual costs to the requester if the requester prevails in whole
7 or in substantial part in any action filed under sub. (1) relating to access to a record
8 or part of a record under s. 19.35 (1) (a). If the requester is a committed or
9 incarcerated person, the requester is not entitled to any minimum amount of
10 damages, but the court may award damages. Costs and fees shall be paid by the
11 authority affected or the unit of government of which it is a part, or by the unit of
12 government by which the legal custodian under s. 19.33 is employed and may not
13 become a personal liability of any public official.

14 (b) ~~In~~ Except as provided in s. 893.83, in any action filed under sub. (1) relating
15 to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that

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1 the authority acted in a wilful or intentional manner, the court shall award the
2 individual actual damages sustained by the individual as a consequence of the
3 failure.

4 **SECTION 3.** 19.37 (3) of the statutes is amended to read:

5 19.37 (3) PUNITIVE DAMAGES. If Except as provided in s. 893.83, if a court finds
6 that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously
7 denied or delayed response to a request or charged excessive fees, the court may
8 award punitive damages to the requester.

9 **SECTION 4.** 66.285 (4) (f) of the statutes is created to read:

10 66.285 (4) (f) An order or contract to which s. 893.83 applies.

11 **SECTION 5.** 218.015 (7) of the statutes is amended to read:

12 218.015 (7) ~~In~~ Except as provided in s. 893.83, in addition to pursuing any other
13 remedy, a consumer may bring an action to recover for any damages caused by a
14 violation of this section. The court shall award a consumer who prevails in such an
15 action twice the amount of any pecuniary loss, together with costs, disbursements
16 and reasonable attorney fees, and any equitable relief the court determines
17 appropriate.

18 **SECTION 6.** 560.05 (3) of the statutes is amended to read:

19 560.05 (3) ~~The~~ Subject to s. 893.83, the state shall be liable for accrued rentals
20 and for any other default under any lease or sublease made under sub. (2) (c) and may
21 be sued therefor on contract as in other contract actions under ch. 775, except that
22 it shall not be necessary for the lessor under any such lease or sublease or any
23 assignee of such lessor or any person or other legal entity proceeding on behalf of such
24 lessor to file any claim with the legislature prior to the commencement of any such
25 action.

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1 **SECTION 7.** 775.01 of the statutes is amended to read:

2 **775.01 Actions against state; bond.** ~~Upon Except as provided in s. 893.83,~~
3 upon the refusal of the legislature to allow a claim against the state the claimant may
4 commence an action against the state by service as provided in s. 801.11 (3) and by
5 filing with the clerk of court a bond, not exceeding \$1,000, with 2 or more sureties,
6 to be approved by the attorney general, to the effect that the claimant will indemnify
7 the state against all costs that may accrue in such action and pay to the clerk of court
8 all costs, in case the claimant fails to obtain judgment against the state.

9 **SECTION 8.** 893.83 of the statutes is created to read:

10 **893.83 Claims against state and local governmental units resulting**
11 **from certain incorrect dates. (1)** In this section:

12 (a) “Electronic computing device” means any computer hardware or software,
13 computer chip, embedded chip, process control equipment, or other information
14 system used to capture, store, manipulate, or process information, or that controls,
15 monitors, or assists in the operation of physical apparatus that relies on automation
16 or digital technology to function.

17 (b) “Local governmental unit” means a political subdivision of this state, a
18 special purpose district in this state, an instrumentality or corporation of such a
19 political subdivision or special purpose district, a combination or subunit of any of
20 the foregoing or an instrumentality of the state and any of the foregoing.

21 (c) “State governmental unit” means this state, and every subunit or
22 instrumentality of this state, including any institution or authority, regardless of
23 whether moneys are appropriated to the unit.

24 **(2)** No person may maintain an action against any state governmental unit or
25 local governmental unit, or any officer, employe or agent of such a unit acting in his

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1 or her capacity as an officer, employe or agent, for any damages arising from any
2 wrongful act or omission caused by the failure of an electronic computing device that
3 is controlled by such a unit, officer, employe or agent to recognize, process,
4 distinguish or interpret the year 2000 or a subsequent year, or the failure of such an
5 electronic computing device to produce, generate or calculate a correct date if the
6 year 2000 or a subsequent year is a part of that date.

7 **(3)** Any provision of a contract entered into, extended, modified or renewed by
8 a state governmental unit or local governmental unit on or after the effective date
9 of this subsection [revisor inserts date], contrary to sub. (2) is void.

10 **SECTION 9. Initial applicability.**

11 (1) This act first applies with respect to noncontractual injuries occurring or
12 injuries occurring under contracts entered into, extended, modified or renewed on
13 the effective date of this subsection.

14 **(END)**