

1999 DRAFTING REQUEST

Bill

Received: 09129198

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **him**

This file may be shown to any legislator: NO

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **Munis - miscellaneous
Counties
State Finance - claims agnst st**

Extra Copies:

Topic:

State and local government 'Year 2000' liability

Instructions:

Exempt state and local governments from "Year 2000" liability.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	kuesejt 10/2/98	gilfokm 10/2/98		_____			S&L
/1			hhagen 10/5/98	_____	lrb-docadmin 10/5/98	lrb-docadmin 10/23/98	

FE Sent For:

01-14-99

<END>

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1? / 1	kuesejt	10/2 1-10-2 bmg	H 10/5	H 1/15 19/5			

FE Sent For:

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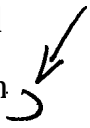
~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Wanted
mon/0/5
Am

1 *Gen Cat.* 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.



This bill provides that no person may recover ^{any} ~~general (direct) or consequential~~ ^(indirect) 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 ~~an~~ ^{a committed or} incarcerated person,
9 the requester is not entitled to any minimum amount of damages, but the court may
10 award damages. Costs and fees shall be paid by the authority affected or the unit
11 of government of which it is a part, or by the unit of government by which the legal
12 custodian under s. 19.33 is employed and may not become a personal liability of any
13 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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97 Act 94

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.

Prop w/ state

Prop w/ state.

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

Prop w/ state

1 or her capacity as an officer, employe or agent, for ~~consequential~~ ^{any} damages arising
 2 from any wrongful act or omission caused by the failure of an electronic computing
 3 device that 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) ~~The treatment of sections 19.37 (2) and (3), 218.015 (7), 560.05 (3), first~~
 12 ~~apply~~ ^{THIS act first applies} with respect to noncontractual injuries occurring or injuries occurring under
 13 contracts entered into, extended, modified or renewed on the effective date of this
 14 subsection.

15 (END)

~~66.285 (4) (f)~~ 775.01 and 893.53

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

O 589/10u
LRB-0418/PLD
JTK:...lp
↑
keep
DOTS.

October 2, 1998

*not edited
for 11/1/98
AJ*

This draft initially applies to liability incurred under contracts entered into, extended, modified or renewed on its effective date (so as not to impair preexisting contracts) and to noncontractual injuries occurring on its effective date (so as not to raise a due process issue by retroactively shifting liability for injuries that have already occurred). Please let me know if you intend otherwise.

You may wish to consider the following collateral issues:

1. Currently, the state or a local governmental unit may, by contract, absolve itself of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. In some cases, this will mean that the cost of this risk is passed back to the governmental unit by way of increased costs for goods or services provided. Because the party with whom the unit contracts has no way of knowing what the unit's Y2K' exposure is, it is possible that ~~it is possible that~~ it will cost that risk on the basis of a worst case assumption. If the governmental unit is reasonably confident that it has little or no 'Y2K' exposure, it may therefore find it advantageous not to shift its contractual 'Y2K' liability in order to obtain the best possible price for goods or services.

2. In litigation, damages are of 3 types: 1) general or compensatory (direct, out-of-pocket damages); 2) consequential (indirect damages such as lost profits or increased borrowing costs); and 3) punitive or exemplary (damages awarded as punishment for wrongful conduct). Under ss. 893.80 (3) and 893.82 (6), stats., punitive damages are not recoverable against a local government or a state or local governmental officer, employe or agent. General damages may include payments ~~may include payments~~ to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

3. Under ss. 16.528 and 66.285, stats., the state and local governments must pay interest on payments that are made late as a result of a 'Y2K' problems. This draft deletes this requirement because under the draft, the state and local governments have no liability in any situation resulting from a 'Y2K' problem. Under ss. 814.04 (4) and 815.05 (8), stats., interest is generally recoverable in civil lawsuits from the time that a verdict or decision is made for the recovery of money, or in some cases from the time that offer of settlement is not accepted, until the judgment is paid (recovery of interest in lawsuits against the state is more limited). This draft does not change these

laws because, under the draft, no lawsuit may be brought whenever damages are incurred as a result of a Y2K' problem. If you decide to allow some general (out-of-pocket) damages to be recovered, however, you may wish to provide an exemption for interest recovery.

4. You may wish to consider excluding from the scope of this proposal actions resulting from gross negligence or wilful misconduct.

5. You may wish to consider placing an expiration (sunset) date on the liability limitation created by this draft in order to provide an incentive for governmental units to remedy Y2K' problems within a reasonable period.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0389/1dn

JTK:...:hnh

Monday, October 5, 1998

This draft initially applies to liability incurred under contracts entered into, extended, modified or renewed on its effective date (so as not to impair preexisting contracts) and to noncontractual injuries occurring on its effective date (so as not to raise a due process issue by retroactively shifting liability for injuries that have already occurred). Please let me know if you intend otherwise.

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Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 10/5/98

To: Representative Schneider

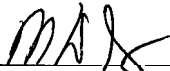
Relating to LRB drafting number: LRB-0389

Topic

State and local government 'Year 2000' liability

Subject(s)

Munis - miscellaneous, Counties, State Finance - claims agnst st

1. **JACKET** the draft for introduction _____ 

in the Senate ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jeffery T. Kuesel, Assistant Chief Counsel
Telephone: (608) 266-6778



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION (606) X6-3561
LEGAL FAX (606) 264-8522

REFERENCE SECTION (606) 266-0341
REFERENCE FAX (606) 266-5646

LRB

February 4, 1999

MEMORANDUM

To: Rep. Marlin Schneider
Room 204 North, Capitol

From: Jeff Kuesel 
Managing Attorney

Subject: 1999 Assembly Bill 19, relating to recovery of damages in actions against the state and local governmental units and officers, employees and agents thereof caused by interpretation, production or use of dates in the year 2000 and subsequent years - technical note from University of Wisconsin system

In the attached technical note, the University of Wisconsin system staff suggests that leap year calculations be included within the immunity from governmental liability for damages under AB-19. Because the year 2000 is a leap year, the year 2000 and subsequent years are included; however, specific date calculations that may be affected by the year 2000 leap year are not included.

If you wish to have an amendment prepared for the purpose of addressing this issue, February 4, 1999 please let me know.

cc: Gordon Anderson, Leg. Council Staff

Bill file

**TECHNICAL MEMO
1999 ASSEMBLY BILL 19**

It might be **helpful if the** bill further included language clarifying that leap year **malfunctions** are also included in the protection against damages and late payments. References to the leap year problem are commonly included in contractual provisions addressing the **"Y2K"** issue.