

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 51**

January 21, 1999 – Offered by COMMITTEE ON INFORMATION POLICY.

1 **AN ACT** *to repeal* 13.0992; *to amend* 19.37 (2), 19.37 (3), 218.015 (7), 560.05 (3)
2 and 775.01; and *to create* 13.0992, 16.528 (3) (f), 66.285 (4) (f), 134.92, 893.83
3 and 904.17 of the statutes; **relating to:** gathering of information by state and
4 local governmental officers and agencies concerning year 2000 and leap
5 year–related processing and public access to such information; recovery of
6 damages in certain actions against state and local governmental units and
7 officers, employes and agents thereof caused by the incorrect processing;
8 transmittal or receipt of certain date data; admissibility of statements
9 regarding the year 2000 processing capabilities of a product or service;
10 preparation of year 2000 impact statements; educational outreach concerning
11 year 2000 and leap year–related computer failures; testing of local emergency
12 contingency plans for responding to year 2000 computer problems; granting
13 rule–making authority; and providing a penalty.

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

1 **SECTION 1.** 13.0992 of the statutes is created to read:

2 **13.0992 Review of bills impacting on year 2000 problem. (1)**

3 DEFINITIONS. In this section:

4 (a) “Department” means the department of administration.

5 (b) “Electronic computing device” means any computer hardware or software,
6 computer chip, embedded chip, process control equipment or other information
7 system used to capture, store, manipulate or process information, or that controls,
8 monitors or assists in the operation of physical apparatus that relies on automation
9 or digital technology to function.

10 (c) “Local governmental unit” means a political subdivision of this state, a
11 special purpose district in this state, an instrumentality or corporation of such a
12 political subdivision or special purpose district, combination or subunit of any of the
13 foregoing or a combination of an instrumentality of the state and any of the foregoing.

14 (d) “Processing” includes calculating, comparing, sequencing, displaying or
15 storing.

16 (e) “State governmental unit” means this state, and every subunit or
17 instrumentality of this state, including any institution or authority, regardless of
18 whether moneys are appropriated to the unit.

19 (f) “Year 2000 problem” means a failure in year 2000 processing of an electronic
20 computing device.

21 (g) “Year 2000 processing” means the processing, transmitting or receiving of
22 date data from, into, and between the 20th and 21st centuries and during the years
23 1999 and 2000, and from leap year calculations.

1 **(2) REPORT ON BILLS IMPACTING ON YEAR 2000 PROBLEM.** (a) Whenever a bill is
2 introduced in either house of the legislature that would have an impact on the ability
3 of a state governmental unit, a local governmental unit or any other person to avoid
4 a year 2000 problem, the department, upon the request of the speaker of the
5 assembly or the president of the senate, shall prepare a report on the bill within 5
6 working days of the request. The department shall request information from any
7 individual, organization or state or local governmental unit that the department
8 considers likely to be affected by the bill, if enacted. Individuals, organizations and
9 state and local governmental units shall comply with requests by the department for
10 information that is reasonably necessary for the department to prepare the report.
11 To the greatest extent possible, reports under this section shall be based on the
12 information obtained by the department from individuals, organizations and state
13 and local governmental units under this paragraph.

14 (b) The report prepared under this section shall be printed as an appendix to
15 that applicable bill and shall be distributed in the same manner as amendments.

16 **(3) FINDINGS OF THE DEPARTMENT TO BE CONTAINED IN THE REPORT.** The report of
17 the department shall contain the following information:

18 (a) A statement of the year 2000 problem affected by the bill, including all of
19 the following:

- 20 1. Whether current law creates a hardship and, if so, the degree of the hardship.
- 21 2. The costs associated with complying with current law and any anticipated
22 savings likely to result from the bill, if enacted.
- 23 3. Whether any other efforts have been made to resolve the year 2000 problem
24 affected by the bill.

1 4. The degree of control by those affected by the bill over the year 2000 problem
2 affected by the bill.

3 (b) A description of the proposed effect of the bill, if enacted, on the year 2000
4 problem.

5 (c) Any other special considerations concerning the effect of the bill, such as the
6 frequency of use of the proposed change and the support and involvement of
7 businesses, industries, state governmental units and local governmental units
8 affected by the proposed change.

9 **(4) RULE-MAKING AUTHORITY.** The department may promulgate any rules
10 necessary for the administration of this section.

11 **SECTION 2.** 13.0992 of the statutes, as created by 1999 Wisconsin Act (this
12 act), is repealed.

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

14 16.528 **(3)** (f) An order or contract to which s. 893.83 applies.

15 **SECTION 4.** 19.37 (2) of the statutes is amended to read:

16 19.37 **(2)** COSTS, FEES AND DAMAGES. (a) Except as provided in this paragraph
17 and s. 893.83, the court shall award reasonable attorney fees, damages of not less
18 than \$100, and other actual costs to the requester if the requester prevails in whole
19 or in substantial part in any action filed under sub. (1) relating to access to a record
20 or part of a record under s. 19.35 (1) (a). If the requester is a committed or
21 incarcerated person, the requester is not entitled to any minimum amount of
22 damages, but the court may award damages. Costs and fees shall be paid by the
23 authority affected or the unit of government of which it is a part, or by the unit of
24 government by which the legal custodian under s. 19.33 is employed and may not
25 become a personal liability of any public official.

1 (b) ~~In~~ Except as provided in s. 893.83, in any action filed under sub. (1) relating
2 to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that
3 the authority acted in a wilful or intentional manner, the court shall award the
4 individual actual damages sustained by the individual as a consequence of the
5 failure.

6 **SECTION 5.** 19.37 (3) of the statutes is amended to read:

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

11 **SECTION 6.** 66.285 (4) (f) of the statutes is created to read:

12 66.285 (4) (f) An order or contract to which s. 893.83 applies.

13 **SECTION 7.** 134.92 of the statutes is created to read:

14 **134.92 Year 2000 processing information. (1)** In this section:

15 (a) “Agent” means an authorized person, other than a director, officer or
16 employe, who acts on behalf of or at the direction of another person.

17 (b) “Authority” has the meaning given in s. 19.32 (1).

18 (c) “Processing” includes calculating, comparing, sequencing, displaying or
19 storing.

20 (d) “Regulatory power” means the power to authorize or require a specific class
21 of persons to perform certain acts.

22 (e) “Year 2000 processing” means the processing, transmitting or receiving of
23 date data from, into, and between the 20th and 21st centuries and during the years
24 1999 and 2000, and from leap year calculations.

1 (f) “Year 2000 statement” means any communication or other conveyance of
2 information by a person to another person or to the public, in any form or medium,
3 including a computer program:

4 1. Concerning an assessment, projection or estimate relating to year 2000
5 processing capabilities of an entity, product, service or set of products and services.

6 2. Concerning plans, objectives, or timetables for implementing or verifying the
7 year 2000 processing capabilities of an entity, product, service or set of products and
8 services.

9 3. Concerning test plans, test dates, test results or operational problems or
10 solutions related to year 2000 processing by products or services that incorporate or
11 utilize products.

12 4. Concerning the correction or avoidance of a year 2000 processing failure in
13 computer hardware, a computer system, a component of a computer system, a
14 computer program or software or services utilizing any computer hardware, system,
15 component, program or software or services.

16 5. Reviewing, commenting on, or otherwise directly or indirectly relating to
17 year 2000 processing capabilities.

18 **(2)** Each authority may require any person over whom the authority exercises
19 regulatory power to provide to the authority information relating to year 2000
20 processing, including a year 2000 statement, with respect to any matter relating to
21 public health or safety that is regulated by that authority or any matter relating to
22 public health or safety that has an effect upon a matter that is regulated by that
23 authority.

24 **(3)** (a) Each director, partner or proprietor of a business shall forfeit \$100 if the
25 business does any of the following:

- 1 1. Fails to provide any information required under sub. (2).
- 2 2. Knowingly gives a false answer to any request for information made under
3 sub. (2).
- 4 3. Evades the answer to any request for information made under sub. (2).
- 5 (b) Each day of violation under par. (a) constitutes a separate offense.
- 6 **(4)** (a) Except as provided in pars. (b) and (c), each authority shall withhold
7 from access by any person under s. 19.35 (1) all information provided to the authority
8 under sub. (2).
- 9 (b) Each authority shall provide to the department of administration, upon
10 written request of the department, any information provided to the authority under
11 sub. (2). The department of administration shall withhold from access by any person
12 under s. 19.35 (1) any information provided to the department under this paragraph.
- 13 (c) Any person who provides information to an authority under sub. (2) may
14 consent in writing to that authority for the authority to provide that information to
15 another specified person or to any person.

16 **SECTION 8.** 218.015 (7) of the statutes is amended to read:

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

23 **SECTION 9.** 560.05 (3) of the statutes is amended to read:

24 560.05 (3) ~~The~~ Subject to s. 893.83, the state shall be liable for accrued rentals
25 and for any other default under any lease or sublease made under sub. (2) (c) and may

1 be sued therefor on contract as in other contract actions under ch. 775, except that
2 it shall not be necessary for the lessor under any such lease or sublease or any
3 assignee of such lessor or any person or other legal entity proceeding on behalf of such
4 lessor to file any claim with the legislature prior to the commencement of any such
5 action.

6 **SECTION 10.** 775.01 of the statutes is amended to read:

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

14 **SECTION 11.** 893.83 of the statutes is created to read:

15 **893.83 Claims against state and local governmental units resulting**
16 **from certain incorrect dates. (1)** In this section:

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

22 (b) “Local governmental unit” means a political subdivision of this state, a
23 special purpose district in this state, an instrumentality or corporation of such a
24 political subdivision or special purpose district, a combination or subunit of any of

1 the foregoing or a combination of an instrumentality of the state and any of the
2 foregoing.

3 (c) “Process” includes calculate, compare, sequence, display or store.

4 (cm) “Remediation plan” means a written document that includes a listing of
5 tasks, resources and target milestone dates, developed to implement changes to
6 ensure that electronic computing devices will accurately process, transmit and
7 receive date data from, into and between the 20th and 21st centuries and during the
8 years of 1999 and 2000, and from leap year calculations.

9 (d) “State governmental unit” means this state, and every subunit or
10 instrumentality of this state, including any institution or authority, regardless of
11 whether moneys are appropriated to the unit, but does not include a local
12 governmental unit.

13 **(2)** No person may maintain an action against any state governmental unit or
14 local governmental unit, or any officer, employe or agent of such a unit acting in his
15 or her capacity as an officer, employe or agent, for any damages arising from any
16 wrongful act or omission caused by the failure of an electronic computing device that
17 is controlled by such a unit, officer, employe or agent to process, transmit or receive
18 date data from, into and between the 20th and 21st centuries and during the years
19 1999 and 2000, and from leap year calculations, if the unit had a remediation plan
20 in effect at the time of the act or omission that was designed to prevent the failure
21 and the unit or the officer, employe or agent made a reasonable effort to find, identify
22 and replace or correct any electronic computing device that may have contributed to
23 the failure. Sections 893.80 and 893.82 apply to any action for damages arising from
24 any wrongful act or omission caused by the failure of an electronic computing device
25 to process, transmit or receive date data from, into and between the 20th and 21st

1 centuries and during the years 1999 and 2000, and from leap year calculations, that
2 is not prohibited by this subsection.

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

6 **SECTION 12.** 904.17 of the statutes is created to read:

7 **904.17 Year 2000 statements. (1)** In this section:

8 (a) “Local governmental unit” means a political subdivision of this state, a
9 special purpose district in this state, an instrumentality or corporation of such a
10 political subdivision or special purpose district, a combination or subunit of any of
11 the foregoing or a combination of an instrumentality of the state and any of the
12 foregoing.

13 (b) “Processing” includes calculating, comparing, sequencing, displaying or
14 storing.

15 (c) “Year 2000 processing” means the processing, transmitting or receiving of
16 date data from, into and between the 20th and 21st centuries, and during the years
17 1999 and 2000, and from leap year calculations.

18 (d) “Year 2000 statement” means any communication or other conveyance of
19 information by a person to another or to the public in any form or medium, including
20 a computer program:

21 1. Concerning an assessment, projection, or estimate relating to year 2000
22 processing capabilities of an entity, product, service or set of products and services.

23 2. Concerning plans, objectives or timetables for implementing or verifying the
24 year 2000 processing capabilities of an entity, product, service or set of products and
25 services.

1 3. Concerning test plans, test dates, test results or operational problems or
2 solutions related to year 2000 processing by products or services that incorporate or
3 utilize products.

4 4. Concerning the correction or avoidance of a year 2000 processing failure in
5 computer hardware, a computer system, a component of a computer system, a
6 computer program or software or services utilizing any computer hardware, system,
7 component, program or software or services.

8 5. Reviewing, commenting on, or otherwise directly or indirectly relating to
9 year 2000 processing capabilities.

10 **(3)** Information contained in a year 2000 statement may be offered in evidence
11 in any civil action or proceeding only if one of the following applies:

12 (a) The information is contained in a year 2000 statement made by a person
13 who knew that the statement was false, misleading or deceptive or that was made
14 with reckless disregard as to the truth or falsity of the statement.

15 (b) The information is contained in a republished year 2000 statement that the
16 person who republished the statement knew was false, misleading or deceptive.

17 (c) The information is contained in a year 2000 statement that was made by a
18 person who was compensated for making that statement as part of a contractual
19 service related to the assessment, contingency planning, remediation or testing of a
20 failure in year 2000 processing.

21 (d) The information is contained in a year 2000 statement that was made by
22 a person when soliciting a consumer, including when advertising or offering to sell
23 a product.

24 (e) The information is being offered in a civil action or proceeding brought by
25 a local governmental unit acting in a regulatory, supervisory or enforcement capacity

1 or by a state governmental unit acting in a regulatory, supervisory or enforcement
2 capacity.

3 (f) The information is contained in a year 2000 statement that omits material
4 information, and the omission of the material information makes the statement
5 false, misleading or deceptive.

6 **SECTION 13. Nonstatutory provisions.**

7 (1) YEAR 2000 EDUCATIONAL OUTREACH.

8 (a) In this subsection:

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

14 2. “Process” includes calculate, compare, sequence, display or store.

15 (b) Notwithstanding section 16.705 (1) of the statutes, the department of
16 administration may contract with one or more private contractors to provide
17 educational outreach with respect to potential failures of electronic computing
18 devices to process, transmit or receive data from, into and between the 20th and
19 21st centuries and during the years 1999 and 2000, and from leap year calculations,
20 and methods of correction of and contingency planning for such failures. No contract
21 entered into under this subsection may extend beyond December 31, 1999. Section
22 16.705 (2) and (3) of the statutes do not apply to any such contract.

23 (2) EMERGENCY MANAGEMENT CONTINGENCY PLANS.

24 (a) In this subsection, “electronic computing device” means any computer
25 hardware or software, computer chip, embedded chip, process control equipment or

1 other information system used to capture, store, manipulate or process information,
2 or that controls, monitors or assists in the operation of physical apparatus that relies
3 on automation or digital technology to function.

4 (b) The department of military affairs shall prepare a plan on how they will
5 review all of the local emergency management services agency contingency plans for
6 responding to the failure of an electronic computing device to process, transmit or
7 receive data from, into and between the 20th and 21st centuries, and during the
8 years 1999 and 2000, and from leap year calculations. The plan shall include an
9 estimate of the costs necessary to review the local contingency plans and, if that
10 review determines that those local emergency management services agency
11 contingency plans are not adequate or need testing, the estimated cost necessary to
12 test those contingency plans. The adjutant general shall submit its findings and plan
13 for funding to the joint committee on finance by the 60th day after the effective date
14 of this paragraph. If the joint committee on finance approves the funding plan, the
15 joint committee on finance may supplement the appropriation under section 20.465
16 (3) (a) of the statutes from the appropriation under section 20.865 (4) (a) of the
17 statutes. Notwithstanding section 13.101 (3) (a) of the statutes, the joint committee
18 on finance is not required to find that an emergency exists.

19 **SECTION 14. Initial applicability.**

20 (1) ADMISSIBILITY OF YEAR 2000 STATEMENTS. The treatment of section 904.17 of
21 the statutes first applies to a year 2000 statement made on the effective date of this
22 subsection.

23 (2) STATE AND LOCAL GOVERNMENTAL LIABILITY. The treatment of sections 16.528
24 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of
25 the statutes first applies with respect to noncontractual injuries occurring or injuries

1 occurring under contracts entered into, extended, modified or renewed on the
2 effective date of this subsection.

3 (3) YEAR 2000 IMPACT STATEMENTS. The creation of section 13.0992 of the statutes
4 first applies to bills introduced on the effective date of this subsection.

5 **SECTION 15. Effective dates.** This act takes effect on the day after
6 publication, except as follows:

7 (1) The repeal of section 13.0992 of the statutes takes effect on January 1, 2001.

8 (END)