LRB-1852

1999 DRAFTING REQUEST

Bill

Received: **01/19/99**

Wanted: **Soon**

For: **Marlin Schneider 7-7251**

This file may be shown to any legislator: **NO**

May Contact:

Received By: **kuesejt**

Identical to LRB:

By/Representing: **Dan Schmidt - LC**

Drafter: **kuesejt**

Alt. Drafters: **rkite**
nilsepe
nelsorp1
olsenje
kahlepj
dykmapj

Subject: **State Government - miscellaneous**
Military Affairs
Legislature - miscellaneous
Courts - immunity liablty
Munis - miscellaneous
Counties
Trade Regulation

Extra Copies: **Dan Schmidt - LC**

Topic:

Year 2000 / leap year changes

Instructions:

Per LRB's -1083/3, -1090/8, -1091/7, -1118/5, -1119/6, -1120/4, -1192/6, s0002/3.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	kuesejt 01/19/99	jgeller 01/19/99	_____ _____				S&L
/1			ismith 01/19/99	_____ _____	lrb_docadmin 01/20/99	lrb_docadminS&L 01/20/99	

Vers.	Drafted	Reviewed	Typist	Proofed	Submitted	Jacketed	Required

FE Sent For: (1/28/99)

<END>

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	kuesejt	/P1 1/19 jlg	1P' dH 1/19 IS/CH 1/19/99	IS/CH 1/19/99			

FE Sent For:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1852/P1
~~LRB-0002-2dn~~
~~RNK:kmg:lp~~
JTK, RPN, PJD, RNK, JEO,
PJK + PEN:

~~January 13, 1999~~

(Sc6sub) *Untrue, deceptive or misleading statements*

Please note the changes that I made in s. 100.261 (4), as created in this draft. I rewrote that provision for clarity purposes only. The changes do not affect the substance or intent of the provision.

Robin N. Kite
Legislative Attorney
266–7291

December 18, 1998

Year 2000 impact statements

The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction.

The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363–369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266-7098

December 14, 1998

(sub5.6) Admissibility of year 2000 and leap year processing statements

I redrafted this proposal with some changes. Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Subsection (1)(b) 4. was added although I cannot find anything like it in the federal law.

I had the same problem with sub. (3)(c), which I added as requested, except that this exception creates other problems. This language seems to remove the immunity from everyone, because everyone is going to be compensated for issuing a year 2000 statement. That will be part of the person's job. This language has to be narrowed in some way, but since I do not know your intent, I did not know how to narrow the language.

Robert P. Nelson
Senior Legislative Attorney
267-7511

January 14, 1999

There appears to be one discrepancy between this draft and LRBs0002. This draft allows the use of a year 2000 statement (which is defined) made by a person who knew the statement was false.... LRBs0002 prohibits a person from making any year 2000 statement (which is not defined as in LRB–1118) which is false.... The definitions create some ambiguity and the knowledge of the person is important in LRB–1118, but not in LRBs0002. Is this okay?

Robert P. Nelson
Senior Legislative Attorney
267–7511

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1119/P1dn
RPN.jlg:ijs

December 7, 1998

(subsub) *Testing of contingency emergency planning*

Please note that s. 16.47 (2), stats., states that neither house may pass any bill containing an appropriation, increasing the cost of state government or decreasing state revenues by more than $10,000 annually until both houses pass the executive budget bill, except that the governor or joint committee on finance or, under certain circumstances, the committee on organization of either house may enact emergency appropriation bills prior to the passage of the executive budget bill.

Note that if this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will be repealed by action of the budget bill (which repeals and recreates the appropriations schedule).

Robert P. Nelson
Senior Legislative Attorney
267–7511

December 11, 1998

(Cubed) *Information gathering*

1. This draft does not prescribe a penalty for a violation of proposed s. 134.92 (2) by any person who is ordered to provide a 'Y2K' statement; it only prescribes a penalty for an officer, employe or agent, other than a director, of such a person. Is this consistent with your intent? Do you wish to limit the scope of proposed s. 134.92 to persons other than individuals?

2. I did not provide a penalty for failure to provide access to private records, corresponding to the penalty prescribed under s. 196.65 (3) (b) 5., stats., because the draft does not authorize authorities to examine such records. If you intend to permit authorities to examine such records, please let me know. If you do, you may wish to grant them subpoena powers.

3. The instructions did not specify whether access to 'Y2K' information by DOA is to be authorized or required. This draft provides, in proposed s. 134.92 (4) (b), that access to such information by DOA is mandatory if DOA requests access.

4. I have not used the term "special year 2000 data gathering request" in this draft because I did not find it necessary or expedient to use it and also because the term as used in federal law refers to an order rather than a request.

5. This draft incorporates the substance of the federal terms "year 2000 statement" and "year 2000 processing". Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

Jeffery T. Kuesel
Assistant Chief-Counsel
266–6778

December 14, 1998

Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to participants in an offense.

Jeffery T. Kuesel
Assistant Chief Counsel
263-6778

December 15, 1998

With respect to your concern that 'Y2K' statements should relate only to matters that may contain a 'Y2K' error, the definition of a "year 2000 statement" in proposed s. 134.92 (1) (f) is limited only to matters relating to "year 2000 processing", which is defined in proposed s. 134.92 (1)(e). This language is essentially taken from the federal law. The federal law is broadly drafted. The language in LRB–1091/4 is more specifically directed at computer failures. However, I did not use this language because I understood that you wanted the statements provided for in this draft to correspond to the federal statements so that potentially the same statements can be used to comply with both federal and state law.

Jeffery T. Kuesel
Assistant Chief Counsel
266–6778

Tuesday, December 30, 1998

1. This draft includes the change you requested which limits the scope of the evidentiary provision to civil actions and proceedings only.

2. Concerning the change that was made in LRB–1090/6 in the definition of "Year 2000 processing", I realize this change reflects the federal text but I intentionally departed from that text because syntactically it doesn't work. Because "calculating" is included in the definition of "processing" the text results in the following: "'Year 2000 processing' means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations". Also, the federal language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate. This issue is also present in the other drafts employing this language.

Jeffery T. Kuesel
Assistant Chief Counsel
266–6778

December 15, 1998

Liability for processing failures

(subseb)

1. Unlike the other 'Y2K' drafts, this draft does not necessarily cover all incorrect dates occurring after the year 2000 because of a year 2000–type failure. For example, it would not cover a date in the year 1901 that is incorrectly substituted for a date in the year 2001 unless the substitution is caused by the failure of a computing device to recognize, process, distinguish or interpret the year 2000. Also, unlike the other drafts, this draft covers only reactive 'Y2K' errors (recognition, processing, distinguishing or interpretation) as opposed to initiation errors (production, generation, calculation). Please let me know if this is not in accord with your intent.

2. 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.

3. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'–related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed chips. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

4. You may also wish to consider the following collateral issues:

a. Currently, the state or a local governmental unit may, by contract, absolve it self of 'Y2K' liability. The party with whom the unit contracts must then assume the 'Y2K' risk of the governmental unit. This draft eliminates that option. 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 will cost that exposure 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.

b. 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 to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting your liability for consequential damages only.

c. 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' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. 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 this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. 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

January 8, 1999

Concerning the definition of "remediation plan", as mentioned in the drafter's note to LRB–1090/7, because "calculate" is included in the definition of "process", the text results in the following: "'Remediation plan' means a written document ... developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the "Y2K" issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate.

Jeffery T. Kuesel
Assistant Chief Counsel
266–6778

Sorted Item List

Store File Name	Text
–1083.1	13.0992 of the statutes is created to read:
–1083.2	13.0992 of the statutes, as created by 1999 Wisconsin Act .... (this act), is repealed.
–1192.1	16.528 (3) (f) of the statutes is created to read:
–1192.2	19.37 (2) of the statutes is amended to read:
–1192.3	19.37 (3) of the statutes is amended to read:
–1091.1	20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:
–1119.1	20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:
–1119.2	20.465 (3) (b) of the statutes is created to read:
–1119.3	20.465 (3) (b) of the statutes, as created by 1999 Wisconsin Act .... (this act), is repealed.
–1091.2	20.505 (1) (fo) of the statutes is created to read:
–1091.3	20.505 (1) (fo) of the statutes, as created by 1999 Wisconsin Act .... (this act), is repealed.
–1120.1	21.11 (1) of the statutes is renumbered 21.11 (1) (a).
–1120.2	21.11 (1) (b) of the statutes is created to read:
–1192.4	66.285 (4) (f) of the statutes is created to read:
–1090.1	134.92 of the statutes is created to read:
–1090.2	134.99 (1) of the statutes is amended to read:
–1119.4	166.03 (2) (a) 6. of the statutes is created to read:
–1119.5	166.03 (2) (a) 6. of the statutes, as created by 1999 Wisconsin Act .... (this act), is repealed.
–1192.5	218.015 (7) of the statutes is amended to read:
–1192.6	560.05 (3) of the statutes is amended to read:
–1192.7	775.01 of the statutes is amended to read:
–1192.8	893.83 of the statutes is created to read:
–1090.3	904.16 of the statutes is created to read:
–1118.1	904.17 of the statutes is created to read:
–1118.2	Initial applicability.

(DNoTE/

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–1852/P1 1
JTK...:hmh

JTK, RfN, BJD, RNK, JSO, PEN + PJK.

WANTed Wed 1/20 8:15 AM

all

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

gen cat

1 AN ACT ...; **relating to:** preparation of year 2000 impact statements; gathering

2 of information by state and local governmental officers and agencies concerning

3 year 2000-related processing; public access to such information; educational
   and leap year   *and*

4 outreach concerning year 2000-related computer failures; admissibility of
                                  and leap year

TNS
1-4

5 statements regarding the year 2000 processing capabilities of a product or

6 service; authorizing the department of military affairs to fund the testing of

7 contingency emergency planning regarding the year 2000 computer problems;

8 authorizing the activation of the national guard for public disasters related to

9 the year 2000 computer issues; recovery of damages in certain actions against

10 state and local governmental units and officers, employes and agents thereof

11 caused by the incorrect interpretation of dates in the year 2000 and subsequent
       processing, transmittal or receipt of certain date data;

12 years granting rule–making authority; making an appropriation; and

13 providing a penalty.

---

subch *Year 2000 impacts statements*

This bill provides that whenever a bill is introduced in either house of the legislature that would have an impact on the ability of a state governmental unit, a local governmental unit or any other person to avoid a year 2000 problem, as defined in the bill, the speaker of the assembly, president of the senate or the chairperson of the standing committee to which the bill is referred may require that a year 2000 *(DOA)* impact statement be prepared by the *department of administration.* The statement describes the impact upon the year 2000 problem that would result from enactment of the bill.

Information gathering *Year 2000 processing includes*

subch *** ANALYSIS FROM 1090/8 ***

This bill permits any state or local governmental unit which or officer who has regulatory power over any person to require that person to provide to the unit or officer information relating to year 2000 processing, including any communication made by the person to any other person or persons: 1) concerning an assessment, projection or estimate relating to, or plans, objectives or timetables for implementing or verifying year 2000 processing capabilities of an entity, product, service or set of products or services; 2) concerning test plans, dates or results, or operational problems or solutions related to year 2000 processing by products or services that incorporate or otherwise utilize products; 3) concerning the correction or avoidance of a year 2000 processing failure in computer hardware, a computer system, a component of a computer system, a computer program or software or services utilizing any computer hardware, system, component, program or software or services; or 4) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities. The information may only pertain to a matter relating to public health or safety that is regulated by that authority or a matter relating to public health or safety that has an effect upon a matter that is regulated by that authority. The bill defines "year 2000 processing" as processing, transmitting or receiving date data from, into and between the 20th and 21st centuries and during the years 1999 and 2000, and from leap year calculations. Currently, no such authority exists.

Under the bill, if any business fails to provide the information required, knowingly gives a false answer to a request for information or evades the answer to any request for information, each director, partner or proprietor of that business is subject to a forfeiture (civil penalty) of $100 for each offense. Each day of violation constitutes a separate offense.

The bill requires each state or local governmental unit which or officer who *(DOA)* receives information under the bill to withhold from access all information provided to the unit or officer under the public records access law, except that the unit or officer must provide the information to the *department of administration* upon written request of the department and may, upon written consent of a person who provides information to the unit or officer, provide the information to another specified person or to any person.

The bill also provides that no information provided to a governmental unit under the bill may be used as evidence in any civil action or proceeding.

*** ANALYSIS FROM 1091/7 ***

Educational outreach

This bill directs the department of administration (DOA) to contract with one or more private contractors to provide educational outreach with respect to the potential failure of computers to process, transmit or receive date data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations, and the methods of correction and contingency planning for such failures. Under the bill, DOA has discretion to determine the persons to whom the outreach is to be provided. The bill appropriates $100,000 in general purpose revenue for this purpose, to be utilized prior to January 1, 2000.

Currently, DOA has no authority or responsibility to conduct outreach for this purpose. Under current law, state agencies may contract for services that they are authorized or required to provide if the services can be provided more economically or efficiently by contract, subject to certain statutory requirements, rules of DOA and collective bargaining laws and agreements. State agencies must justify the need for contractual service procurements. The bill provides that certain of these statutes and rules do not apply to the contractual services that DOA is required to procure under the bill.

*** ANALYSIS FROM –1118/5 ***

This bill provides that no information contained in any statement that discloses the year 2000 processing capabilities of a product, service or set of products and services may be used in any civil action or proceeding. This evidence limitation applies to any statement that concerns an assessment, comment, correction, estimate, objective, plan, projection, review, timetable or test regarding the year 2000 processing capabilities of a product or service. The limitation does not apply to a year 2000 processing capabilities statement made by a person who knew that the statement was false, misleading or deceptive or that was made with reckless disregard as to the truth or falsity of the statement, to a republished year 2000 statement that the person who republished the statement knew was false, inaccurate or misleading, to a statement made by a person who was compensated for providing a year 2000 statement as part of a contractual service or made by a person when soliciting a consumer or to any action brought by the state or a local governmental unit acting in regulatory, supervisory or enforcement capacity.

*** ANALYSIS FROM –1119/6 ***

Under current law, the adjutant general, as the head of the department of military affairs is required to develop and promulgate a statewide plan of emergency management for the security of persons and property and to provide training to and standards for local emergency planning agencies. This bill gives the adjutant general the funding authority for the testing of the local emergency management agency contingency plans concerning possible failure of computer devices to deal with the year 2000 problems.

*** ANALYSIS FROM –1120/4 ***

Under current law, in response to a war, insurrection, rebellion, riot or invasion, in the event of a public disaster resulting from a flood, conflagration or tornado, or upon application of certain public officials, the governor may order into active service all or any portion of the national guard. Current law also includes a procedure for activating the national guard if the governor is not able to do so.

This bill allows for activation of the national guard for a public disaster resulting from a computer device's failure to recognize and respond correctly to the year 2000 date data and in anticipation of such a public disaster.

(handwritten: Subs⊗ State and local governmental liability)

*** ANALYSIS FROM 1192/6 ***

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. A state or local governmental officer, employe or agent who is sued for a negligent action or omission may be protected from liability currently if the officer, employe or agent makes a good faith attempt to resolve the problem that results in the act or omission. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any lawsuit against a state or local governmental officer, employe or agent 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 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 process, transmit or receive date data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations if the unit had a remediation plan in effect at the time of the act or omission that was designed to prevent the failure and the unit or the officer, employe or agent made a reasonable effort to find, identify and replace or correct any electronic computing device that may have contributed to the failure. The bill also voids any contrary provision of a contract entered into on or after the day on which the bill becomes law. 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.** 13.0992 of the statutes is created to read:

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

2   DEFINITIONS. In this section:

3   (a) "Department" means the department of administration.

4   (b) "Electronic computing device" means any computer hardware or software,

5   computer chip, embedded chip, process control equipment or other information

6   system used to capture, store, manipulate or process information, or that controls,

7   monitors or assists in the operation of physical apparatus that relies on automation

8   or digital technology to function.

9   (c) "Local governmental unit" means a political subdivision of this state, a

10   special purpose district in this state, an instrumentality or corporation of such a

11   political subdivision or special purpose district or a combination or subunit of any of

12   the foregoing or an instrumentality of the state and any of the foregoing.

13   (d) "Processing" includes calculating, comparing, sequencing, displaying or

14   storing.

15   (e) "State governmental unit" means this state, and every subunit or

16   instrumentality of this state, including any institution or authority, regardless of

17   whether moneys are appropriated to the unit.

18   (f) "Year 2000 problem" means a failure in year 2000 processing of an electronic

19   computing device.

20   (g) "Year 2000 processing" means the processing, transmitting or receiving of

21   date data from, into, and between the 20th and 21st centuries and during the years

22   1999 and 2000, and from leap year calculations.

23   **(2)** REPORT ON BILLS IMPACTING ON YEAR 2000 PROBLEM. (a) Whenever a bill is

24   introduced in either house of the legislature that would have an impact on the ability

25   of a state governmental unit, a local governmental unit or any other person to avoid

1   a year 2000 problem, the department, upon the request of the speaker of the

2   assembly, the president of the senate or the chairperson of a standing committee to

3   which the bill is referred, shall prepare a report on the bill within 5 working days of

4   the request. The department shall request information from any individual,

5   organization or state or local governmental unit that the department considers likely

6   to be affected by the bill, if enacted. Individuals, organizations and state and local

7   governmental units shall comply with requests by the department for information

8   that is reasonably necessary for the department to prepare the report. To the

9   greatest extent possible, reports under this section shall be based on the information

10   obtained by the department from individuals, organizations and state and local

11   governmental units under this paragraph.

12   (b) The report prepared under this section shall be printed as an appendix to

13   that applicable bill and shall be distributed in the same manner as amendments.

14   **(3)** FINDINGS OF THE DEPARTMENT TO BE CONTAINED IN THE REPORT. The report of

15   the department shall contain the following information:

16   (a) A statement of the year 2000 problem affected by the bill, including all of

17   the following:

18   1. Whether current law creates a hardship and, if so, the degree of the hardship.

19   2. The costs associated with complying with current law and any anticipated

20   savings likely to result from the bill, if enacted.

21   3. Whether any other efforts have been made to resolve the year 2000 problem

22   affected by the bill.

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

24   affected by the bill.

1   (b) A description of the proposed effect of the bill, if enacted, on the year 2000

2   problem.

3   (c) Any other special considerations concerning the effect of the bill, such as the

4   frequency of use of the proposed change and the support and involvement of

5   businesses, industries, state governmental units and local governmental units

6   affected by the proposed change.

7   **(4)** RULE–MAKING AUTHORITY. The department may promulgate any rules

8   necessary for the administration of this section.

9   SECTION 2. 13.0992 of the statutes, as created by 1999 Wisconsin Act .... (this

10   act), is repealed.

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

12   16.528 **(3)** (f) An order or contract to which s. 893.83 applies.

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

14   19.37 **(2)** COSTS, FEES AND DAMAGES. (a) Except as provided in this paragraph

15   and s. 893.83, the court shall award reasonable attorney fees, damages of not less

16   than $100, and other actual costs to the requester if the requester prevails in whole

17   or in substantial part in any action filed under sub. (1) relating to access to a record

18   or part of a record under s. 19.35 (1) (a). If the requester is a committed or

19   incarcerated person, the requester is not entitled to any minimum amount of

20   damages, but the court may award damages. Costs and fees shall be paid by the

21   authority affected or the unit of government of which it is a part, or by the unit of

22   government by which the legal custodian under s. 19.33 is employed and may not

23   become a personal liability of any public official.

24   (b) In Except as provided in s. 893.83, in any action filed under sub. (1) relating

25   to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that

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 5.** 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 6.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert

10   the following amounts for the purposes indicated:

11   1997-98   1998-99

12   **20.505   Administration, department of**

13   (1)   SUPERVISION AND MANAGEMENT; LAND INFORMATION

14   BOARD

15   (fo)   Year 2000 educational outreach   GPR   C   –0–   100,000

16   SECTION 7. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert

17   the following amounts for the purposes indicated:

18   1997-98   1998-99

19   **20.465   Military affairs, department of**

20   (3)   EMERGENCY MANAGEMENT SERVICES

21   (b)   Year 2000 computer program

22   development   GPR   C   –0–   50,000

23   **SECTION 8.** 20.465 (3) (b) of the statutes is created to read:

1   20.465 **(3)** (b) *Year 2000 computer program development.* As a continuing

2   appropriation, the amounts in the schedule for the development, testing and

3   distribution of a computer program under s. 166.03 (2) (a) 6.

4   **SECTION 9.** 20.465 (3) (b) of the statutes, as created by 1999 Wisconsin Act ....

5   (this act), is repealed.

6   **SECTION 10.** 20.505 (1) (fo) of the statutes is created to read:

7   20.505 **(1)** (fo) *Year 2000 educational outreach.* As a continuing appropriation,

8   the amounts in the schedule to contract for educational outreach services under 1999

9   Wisconsin Act .... (this act), section 9101 (1).

10   **SECTION 11.** 20.505 (1) (fo) of the statutes, as created by 1999 Wisconsin Act ....

11   (this act), is repealed.

12   **SECTION 12.** 21.11 (1) of the statutes is renumbered 21.11 (1) (a).

13   **SECTION 13.** 21.11 (1) (b) of the statutes is created to read:

14   21.11 **(1)** (b) 1. In this paragraph "electronic computing device" means any

15   computer hardware or software, computer chip, embedded chip, process control

16   equipment, or other information system used to capture, store, manipulate, or

17   process information, or that controls, monitors, or assists in the operation of physical

18   apparatus that relies on automation or digital technology to function.

19   2. In anticipation of, or in the event of, a public disaster resulting from the

20   failure of an electronic computing device to process, transmit or receive date data

21   from, into and between the 20th and 21st centuries, and during the years 1999 and

22   2000, and from leap year calculations, the governor may order into active service all

23   or any portion of the national guard. If the governor is absent, or cannot be

24   immediately communicated with, the commanding officers of any national guard

25   company, battalion or regiment may, upon approval of the adjutant general, if the

1   danger is great and imminent, order out that officer's command to respond to the

2   public disaster. The order shall be delivered to the commanding officer, who shall

3   immediately communicate the order to each, and every subordinate officer. Every

4   company commander receiving an order under this paragraph shall immediately

5   communicate the substance of that order to each member of the company, or if any

6   member cannot be found, a notice in writing containing the substance of the order

7   shall be left at the last and usual place of residence of the member with some person

8   of suitable age and discretion, to whom its contents shall be explained. This

9   paragraph does not apply after December 31, 2000.

10   **SECTION 14.** 66.285 (4) (f) of the statutes is created to read:

11   66.285 **(4)** (f) An order or contract to which s. 893.83 applies.

12   **SECTION 15.** 134.92 of the statutes is created to read:

13   **134.92 Year 2000 processing information. (1)** In this section:

14   (a) "Agent" means an authorized person, other than a director, officer or

15   employe, who acts on behalf of or at the direction of another person.

16   (b) "Authority" has the meaning given in s. 19.32 (1).

17   (c) "Processing" includes calculating, comparing, sequencing, displaying or

18   storing.

19   (d) "Regulatory power" means the power to authorize or require a specific class

20   of persons to perform certain acts.

21   (e) "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   (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   **(5)** No information provided to an authority upon request of the authority

17   under sub. (2) ~~may be used as~~ [is admissible in] evidence in any civil action or proceeding.

18   **SECTION 16.** 134.99 (1) of the statutes is amended to read:

19   134.99 **(1)** Whoever is concerned in the commission of a violation of this

20   chapter, except s. 134.92, for which a forfeiture is imposed is a principal and may be

21   charged with and convicted of the violation although he or she did not directly

22   commit it and although the person who directly committed it has not been convicted

23   of the violation.

24   **SECTION 17.** 166.03 (2) (a) 6. of the statutes is created to read:

1   166.03 **(2)** (a) 6. Provide funding to one or more counties, cities, villages or

2   towns for the testing of the local emergency management services agency

3   contingency plans for responding to the failure of an electronic computing device to

4   process, transmit or receive date data from, into and between the 20th and 21st

5   centuries, and during the years 1999 and 2000, and from leap year calculations. In

6   this subdivision, "electronic computing device" means any computer hardware or

7   software, computer chip, embedded chip, process control equipment, or other

8   information system used to capture, store, manipulate, or process information, or

9   that controls, monitors, or assists in the operation of physical apparatus that relies

10   on automation or digital technology to function.

11   **SECTION 18.** 166.03 (2) (a) 6. of the statutes, as created by 1999 Wisconsin Act

12   .... (this act), is repealed.

13   **SECTION 19.** 218.015 (7) of the statutes is amended to read:

14   218.015 **(7)** ~~In~~ Except as provided in s. 893.83, in addition to pursuing any other

15   remedy, a consumer may bring an action to recover for any damages caused by a

16   violation of this section. The court shall award a consumer who prevails in such an

17   action twice the amount of any pecuniary loss, together with costs, disbursements

18   and reasonable attorney fees, and any equitable relief the court determines

19   appropriate.

20   **SECTION 20.** 560.05 (3) of the statutes is amended to read:

21   560.05 **(3)** ~~The~~ Subject to s. 893.83, the state shall be liable for accrued rentals

22   and for any other default under any lease or sublease made under sub. (2) (c) and may

23   be sued therefor on contract as in other contract actions under ch. 775, except that

24   it shall not be necessary for the lessor under any such lease or sublease or any

25   assignee of such lessor or any person or other legal entity proceeding on behalf of such

1   lessor to file any claim with the legislature prior to the commencement of any such

2   action.

3   SECTION 21. 775.01 of the statutes is amended to read:

4   **775.01 Actions against state; bond.** ~~Upon~~ Except as provided in s. 893.83,

5   upon the refusal of the legislature to allow a claim against the state the claimant may

6   commence an action against the state by service as provided in s. 801.11 (3) and by

7   filing with the clerk of court a bond, not exceeding $1,000, with 2 or more sureties,

8   to be approved by the attorney general, to the effect that the claimant will indemnify

9   the state against all costs that may accrue in such action and pay to the clerk of court

10   all costs, in case the claimant fails to obtain judgment against the state.

11   SECTION 22. 893.83 of the statutes is created to read:

12   **893.83 Claims against state and local governmental units resulting**

13   **from certain incorrect dates. (1)** In this section:

14   (a) "Electronic computing device" means any computer hardware or software,

15   computer chip, embedded chip, process control equipment, or other information

16   system used to capture, store, manipulate, or process information, or that controls,

17   monitors, or assists in the operation of physical apparatus that relies on automation

18   or digital technology to function.

19   (b) "Local governmental unit" means a political subdivision of this state, a

20   special purpose district in this state, an instrumentality or corporation of such a

21   political subdivision or special purpose district, a combination or subunit of any of

22   the foregoing or an instrumentality of the state and any of the foregoing.

23   (c) "Process" includes calculate, compare, sequence, display or store.

24   (cm) "Remediation plan" means a written document that includes a listing of

25   tasks, resources and target milestone dates, developed to implement changes to

1   ensure that electronic computing devices will accurately process, transmit and

2   receive date data from, into and between the 20th and 21st centuries and during the

3   years of 1999 and 2000, and from leap year calculations.

4   (d) "State governmental unit" means this state, and every subunit or

5   instrumentality of this state, including any institution or authority, regardless of

6   whether moneys are appropriated to the unit, but does not include a local

7   governmental unit.

8   **(2)** No person may maintain an action against any state governmental unit or

9   local governmental unit, or any officer, employe or agent of such a unit acting in his

10   or her capacity as an officer, employe or agent, for any damages arising from any

11   wrongful act or omission caused by the failure of an electronic computing device that

12   is controlled by such a unit, officer, employe or agent to process, transmit or receive

13   date data from, into and between the 20th and 21st centuries and during the years

14   1999 and 2000, and from leap year calculations, if the unit had a remediation plan

15   in effect at the time of the act or omission that was designed to prevent the failure

16   and the unit or the officer, employe or agent made a reasonable effort to find, identify

17   and replace or correct any electronic computing device that may have contributed to

18   the failure.

19   **(3)** Any provision of a contract entered into, extended, modified or renewed by

20   a state governmental unit or local governmental unit on or after the effective date

21   of this subsection .... [revisor inserts date], contrary to sub. (2) is void.

22   SECTION 23. 904.16 of the statutes is created to read:

23   **904.16 Year–2000 processing information.** No information provided to an

24   authority, as defined under s. 134.92 (1) (b), upon request of the authority under s.

25   134.92 (2) is admissible in evidence in any civil action or proceeding.

1   **SECTION 24.** 904.17 of the statutes is created to read:

2   **904.17 Year 2000 ~~business disclosure~~ statements.** (1) In this section:

3   (a) "Local governmental unit" means a political subdivision of this state, a

4 special purpose district in this state, an instrumentality or corporation of such a

5 political subdivision or special purpose district, a combination or subunit of any of

6 the foregoing or an instrumentality of the state and any of the foregoing.

7   (b) "Processing" includes calculating, comparing, sequencing, displaying or

8 storing.

9   (c) "Year 2000 processing" means the processing, transmitting or receiving of

10 date data from, into and between the 20th and 21st centuries, and during the years

11 1999 and 2000, and from leap year calculations.

12   (d) "Year 2000 statement" means any communication or other conveyance of

13 information by a person to another or to the public in any form or medium, including

14 a computer program:

15   1. Concerning an assessment, projection, or estimate relating to year 2000

16 processing capabilities of an entity, product, service or set of products and services.

17   2. Concerning plans, objectives or timetables for implementing or verifying the

18 year 2000 processing capabilities of an entity, product, service or set of products and

19 services.

20   3. Concerning test plans, test dates, test results or operational problems or

21 solutions related to year 2000 processing by products or services that incorporate or

22 utilize products.

23   4. Concerning the correction or avoidance of a year 2000 processing failure in

24 computer hardware, a computer system, a component of a computer system, a

1   computer program or software or services utilizing any computer hardware, system,

2   component, program or software or services.

3   5. Reviewing, commenting on, or otherwise directly or indirectly relating to

4   year 2000 processing capabilities.

⑤   (2) Except as provided in sub. (3), no information contained in a year 2000

6   statement may be used in any civil action or proceeding.

7   **(3)** The limitation under sub. (2) does not apply to any of the following:

8   (a) A year 2000 statement made by a person who knew that the statement was

9   false, misleading or deceptive or that was made with reckless disregard as to the

10   truth or falsity of the statement.

11   (b) A republished year 2000 statement that the person who republished the

12   statement knew was false, inaccurate or misleading.

13   (c) A year 2000 statement that was made by a person who was compensated

14   for making that statement as part of a contractual service related to the assessment

15   contingency planning, remediation or testing of a failure in year 2000 processing.

16   (d) A year 2000 statement that was made by a person when soliciting a

17   consumer, including when advertising or offering to sell a product.

18   (e) A civil action or proceeding brought by a local governmental unit acting in

19   a regulatory, supervisory or enforcement capacity or by a state governmental unit

20   acting in a regulatory, supervisory or enforcement capacity.

21   **SECTION 25. Initial applicability.**

22   (1) IMMUNITY FOR YEAR 2000 STATEMENTS. The treatment of section 904.17 of the

23   statutes first applies to a year 2000 statement made on the effective date of this

24   subsection.

25   ~~SECTION 26. Initial applicability; legislature.~~

(3) YEAR 2000 IMPACT STATEMENTS.

1 (T) The creation of section 13.0992 of the statutes first applies to bills
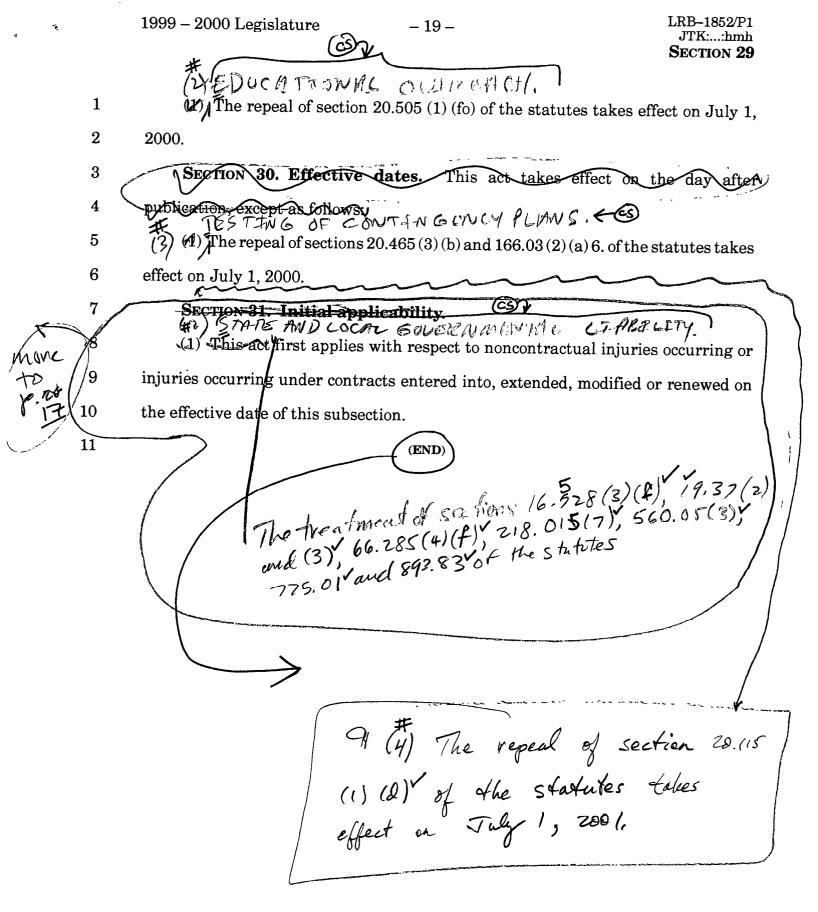
2 introduced on the effective date of this subsection.

3 **SECTION 27. Effective dates.** This act takes effect on the day after

4 publication, except as follows:

YEAR 2000 IMPACT STATEMENTS.

5 (1) The repeal of section 13.0992 of the statutes takes effect on January 1, 2001.
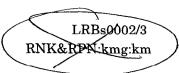
6 ~~SECTION 28. Nonstatutory provisions.~~

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, from the moneys

16 appropriated under section 20.505 (1) (fo) of the statutes, as created by this act, the

17 department of administration shall contract with one or more private contractors to

18 provide educational outreach with respect to potential failures of electronic

19 computing devices to process, transmit or receive date data from, into and between

20 the 20th and 21st centuries and during the years 1999 and 2000, and from leap year

21 calculations, and methods of correction of and contingency planning for such

22 failures. No contract entered into under this subsection may extend beyond

23 December 31, 1999. Section 16.705 (2) and (3) of the statutes do not apply to any such

24 contract.

25 ~~SECTION 29. Effective date.~~

(2) EDUCATIONAL EQUIPMENT.

1   (2) The repeal of section 20.505 (1) (fo) of the statutes takes effect on July 1,

2   2000.

3   **SECTION 30. Effective dates.** This act takes effect on the day after

4   publication, except as follows: *TESTING OF CONTINGENCY PLANS.*

5   (3) (1) The repeal of sections 20.465 (3) (b) and 166.03 (2) (a) 6. of the statutes takes

6   effect on July 1, 2000.

7   **SECTION 31. Initial applicability.** *(1) STATE AND LOCAL GOVERNMENTAL LIABILITY.*

move to p. 20 17

8   (1) This act first applies with respect to noncontractual injuries occurring or

9   injuries occurring under contracts entered into, extended, modified or renewed on

10   the effective date of this subsection.

11

(END)

The treatment of sections 16.528 (3) (f), 19.37 (2) and (3), 66.285 (4) (f), 218.015 (7), 560.05 (3), 775.01 and 893.83 of the statutes

(4) The repeal of section 20.115 (1) (d) of the statutes takes effect on July 1, 2001.

ASSEMBLY SUBSTITUTE AMENDMENT ,

TO 1999 ASSEMBLY BILL (LRB-1088/1)

INS 1-4

(1) AN ACT to repeal 20.115 (1) (d); to amend 814.04 (intro.); and to create 20.115

(2) (1) (d) and 100.261 of the statutes; **relating to:** untrue, deceptive or misleading

3 statements in connection with the ability of an electronic computing device to

4 process, transmit or receive date data from, into and between the 20th and 21st

5 centuries, and during the years 1999 and 2000, and from leap year calculations;

(6) making an appropriation and providing a penalty.

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

7 SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert

8 the following amounts for the purposes indicated:

IADS 8 -10:

2 **20.115 Agriculture, trade and consumer**

3 **protection, department of**

4 (1) FOOD SAFETY AND CONSUMER PROTECTION

5 (d) Year 2000 consumer protection   GPR   C   –0–   410,700

6 **SECTION 2.** 20.115 (1) (d) of the statutes is created to read:

IADS 8-22

7 20.115 **(1)** (d) *Year 2000 consumer protection.* As a continuing appropriation,

8 the amounts in the schedule for the administration and enforcement of s. 100.261

9 and other consumer protection activities relating to the year 2000 readiness of

10 electronic computing devices.

11 **SECTION 3.** 20.115 (1) (d) of the statutes, as created by 1999 Wisconsin Act ....
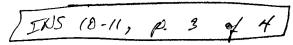
12 (this act), is repealed.

13 **SECTION 4.** 100.261 of the statutes is created to read:

14 **100.261 Year 2000 readiness. (1)** DEFINITIONS. In this section:

15 (a) "Electronic computing device" means any computer hardware or software,

16 computer chip, embedded chip, process control equipment, or other information

17 system used to capture, store, manipulate, or process information, or that controls,

18 monitors, or assists in the operation of physical apparatus that relies on automation

19 or digital technology to function.

20 (b) "Process" includes calculate, compare, sequence, display and store.

21 (c) "Year 2000 readiness" means the ability to process, transmit or receive date

22 data from, into and between the 20th and 21st centuries, and during the years 1999

23 and 2000, and from leap year calculations.

1999 – 2000 Legislature   – 2 –   LRBs0002/3
RNK&RPN:kmg:km
SECTION 1

INS 10 – 11, p. 1 of 4

		1997–98	1998–99
20.115 Agriculture, trade and consumer protection, department of			
(1) FOOD SAFETY AND CONSUMER PROTECTION			
(d) Year 2000 consumer protection GPR C		–0–	410,700

SECTION 2. 20.115 (1) (d) of the statutes is created to read:

20.115 **(1)** (d) *Year 2000 consumer protection.* As a continuing appropriation, the amounts in the schedule for the administration and enforcement of s. 100.261 and other consumer protection activities relating to the year 2000 readiness of electronic computing devices.

SECTION 3. 20.115 (1) (d) of the statutes, as created by 1999 Wisconsin Act ....

(this act), is repealed.

SECTION 4. 100.261 of the statutes is created to read:

100.261 Year 2000 readiness. (1) DEFINITIONS. In this section:

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

(b) "Process" includes calculate, compare, sequence, display and store.

(c) "Year 2000 readiness" means the ability to process, transmit or receive date data from, into and between the 20th and 21st centuries, and during the years 1999 and 2000, and from leap year calculations.

1999 – 2000 Legislature   **– 3 –**   LRBs0002/3
RNK&RPN:kmg:km
SECTION 4

INS 10-11, p. 2 of 4

1   **(2)** ADVERTISING AND SALES REPRESENTATIONS. A person may not make any

2   statement or representation with regard to the year 2000 readiness of an electronic

3   computing device which is false, misleading or deceptive, or which omits material

4   information with respect to the year 2000 readiness of an electronic computing

5   device that is necessary to make the statement not false, misleading or deceptive.

6   For the purpose of this subsection, it is false, misleading or deceptive to state or

7   represent that an electronic computing device is able to process, transmit or receive

8   date data from, into and between the 20th and 21st centuries and during the years

9   1999 and 2000, and from leap year calculations if the electronic computing device

10   cannot do so without modification or alteration.

11   **(3)** INFORMATION ON YEAR 2000 READINESS. The department may request

12   information about the year 2000 readiness of an electronic computing device from

13   any person who sells or offers to sell or who has ever sold or offered to sell an

14   electronic computing device to a person in this state.

15   **(4)** REMEDIES AND PENALTIES. (a) 1. If a person makes a statement or

16   representation in violation of sub. (2), any other person adversely affected by that

17   violation has a claim for appropriate relief, including not less than $500 nor more

18   than twice the amount of damages, injunctive or declaratory relief, specific

19   performance and rescission.

20   2. If a person fails to respond to an information request about the year 2000

21   readiness of an electronic computing device by the department under sub. (3) or if the

22   person provides information to the department in response to a request about the

23   year 2000 readiness of an electronic computing device under sub. (3) that is false,

24   misleading or deceptive, then any person adversely affected by the failure of that

25   electronic computing device to process, transmit or receive date data from, into and

INS 10-11, p. 3 of 4

1 between the 20th and 21st centuries and during the years 1999 and 2000, and from

2 leap year calculations has a claim for appropriate relief, including not less than $500

3 nor more than twice the amount of damages, injunctive or declaratory relief, specific

4 performance and rescission against the person who failed to respond to the

5 department's request or gave the department false, misleading or deceptive

6 information.

7   3. A person who is entitled to relief under subd. 1. or 2. is also entitled to recover

8 costs and disbursements, including reasonable attorney fees.

9   (b) 1. The department of agriculture, trade and consumer protection may

10 request the department of justice to commence, or any district attorney, upon

11 informing the department of agriculture, trade and consumer protection, may

12 commence, an action in circuit court in the name of the state to restrain by temporary

13 or permanent injunction any violation of sub. (2). In addition to injunctive relief, the

14 court may award any person twice the amount of any damages suffered because of

15 a violation of sub. (2).

16   2. The department may exercise its authority under ss. 93.14 to 93.16 and

17 100.18 (11) (c) to administer this section. The department may subpoena persons and

18 require the production of books and other documents in a timely manner.

19   (c) Any person who violates sub. (2) or who fails to respond to an information

20 request made by the department under sub. (3) or who provides information to the

21 department in response to a request made under sub. (3) that is false, misleading or

22 deceptive shall forfeit not less than $100 nor more than $10,000 for each offense.

23   (d) This section does not preempt the administration or enforcement of this

24 chapter or ch. 133. Practices in violation of this section may also constitute unfair

[handwritten: INS 10-11, p - 4 of 4]

1 methods of competition or unfair trade practices under s. 100.20 (1) or (1t) or

2 fraudulent representations under s. 100.18 (1) or violate ch. 133.

3 **SECTION 5.** 814.04 (intro.) of the statutes is amended to read:

4 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),

5 106.04 (6) (i) and (6m) (a), 100.261 (4) (a) 3., 115.80 (9), 769.313, 814.025, 814.245,

6 895.035 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2)

7 (d) and 943.51 (2) (b), when allowed, costs shall be as follows:

8 **SECTION 6. Nonstatutory provisions.**

9 (1) The authorized FTE positions for the department of agriculture, trade and

10 consumer protection are increased by 4.0 GPR project positions, to be funded from

11 the appropriation under section 20.115 (1) (d) of the statutes, as created by this act,

12 for the purpose of administering and enforcing section 100.261 of the statutes, as

13 created by this act, and other consumer protection activities relating to the year 2000

14 readiness, as defined in section 100.261 (1) (c) of the statutes, as created by this act,

15 of an electronic computing device, as defined in section 100.261 (1) (a) of the statutes,

16 as created by this act for the period ending on June 30, 2001.

17 **SECTION 7. Effective dates.** This act takes effect on the day after publication,

18 except as follows:

19 (1) The repeal of section 20.115 (1) (d) of the statutes takes effect on July 1,

20 2001.

21 (END)
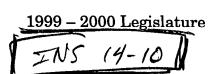
1999 – 2000 Legislature   – 5 –   LRBs0002/3
RNK&RPN:kmg:km
SECTION 4

INS 14-10

1   methods of competition or unfair trade practices under s. 100.20 (1) or (1t) or

2   fraudulent representations under s. 100.18 (1) or violate ch. 133.

3   **SECTION 5.** 814.04 (intro.) of the statutes is amended to read:

4   **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),

5   106.04 (6) (i) and (6m) (a), 100.261 (4) (a) 3., 115.80 (9), 769.313, 814.025, 814.245,

6   895.035 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2)

7   (d) and 943.51 (2) (b), when allowed, costs shall be as follows:

8   **SECTION 6. Nonstatutory provisions.**

9   (1) The authorized FTE positions for the department of agriculture, trade and

10   consumer protection are increased by 4.0 GPR project positions, to be funded from

11   the appropriation under section 20.115 (1) (d) of the statutes, as created by this act,

12   for the purpose of administering and enforcing section 100.261 of the statutes, as

13   created by this act, and other consumer protection activities relating to the year 2000

14   readiness, as defined in section 100.261 (1) (c) of the statutes, as created by this act,

15   of an electronic computing device, as defined in section 100.261 (1) (a) of the statutes,

16   as created by this act for the period ending on June 30, 2001.

17   **SECTION 7. Effective dates.** This act takes effect on the day after publication,

18   except as follows:

19   (1) The repeal of section 20.115 (1) (d) of the statutes takes effect on July 1,

20   2001.

21   (END)

Insert 17-5, p. 1 of 2

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

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

(2) No information provided to an authority under s. 134.92 (2) is admissible in evidence in any civil action or proceeding.

(3) Except for information covered under sub. (2), information contained in a year 2000 statement may be offered in evidence in any civil action or proceeding only if one of the following applies:

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

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

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

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

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

[handwritten in box: TNS 17-5, p. 2 of 2]

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

2   capacity. *[handwritten: (f) The information is being offered in any action or proceeding brought under s. 100.261.]*

3   ~~SECTION 14. Nonstatutory provisions.~~

4   (1) YEAR 2000 EDUCATIONAL OUTREACH.

5   (a) In this subsection:

6   1. "Electronic computing device" means any computer hardware or software,

7   computer chip, embedded chip, process control equipment, or other information

8   system used to capture, store, manipulate, or process information, or that controls,

9   monitors, or assists in the operation of physical apparatus that relies on automation

10   or digital technology to function.

11   2. "Process" includes calculate, compare, sequence, display or store.

12   (b) Notwithstanding section 16.705 (1) of the statutes, the department of

13   administration may contract with one or more private contractors to provide

14   educational outreach with respect to potential failures of electronic computing

15   devices to process, transmit or receive date data from, into and between the 20th and

16   21st centuries and during the years 1999 and 2000, and from leap year calculations,

17   and methods of correction of and contingency planning for such failures. No contract

18   entered into under this subsection may extend beyond December 31, 1999. Section

19   16.705 (2) and (3) of the statutes do not apply to any such contract.

20   (2) EMERGENCY MANAGEMENT CONTINGENCY PLANS.

21   (a) In this subsection, "electronic computing device" means any computer

22   hardware or software, computer chip, embedded chip, process control equipment or

23   other information system used to capture, store, manipulate or process information,

24   or that controls, monitors or assists in the operation of physical apparatus that relies

25   on automation or digital technology to function.

1999 – 2000 Legislature   – 5 –   LRBs0002/3
RNK&RPN:kmg:km
SECTION 4

INS 17 - 20

1   methods of competition or unfair trade practices under s. 100.20 (1) or (1t) or

2   fraudulent representations under s. 100.18 (1) or violate ch. 133.

3   **SECTION 5.** 814.04 (intro.) of the statutes is amended to read:

4   **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),

5   106.04 (6) (i) and (6m) (a), 100.261 (4) (a) 3., 115.80 (9), 769.313, 814.025, 814.245,

6   895.035 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2)

7   (d) and 943.51 (2) (b), when allowed, costs shall be as follows:

8   **SECTION 6. Nonstatutory provisions.**

    POSITION AUTHORIZATIONS.

9   (1) The authorized FTE positions for the department of agriculture, trade and

10   consumer protection are increased by 4.0 GPR project positions, to be funded from

11   the appropriation under section 20.115 (1) (d) of the statutes, as created by this act,

12   for the purpose of administering and enforcing section 100.261 of the statutes, as

13   created by this act, and other consumer protection activities relating to the year 2000

14   readiness, as defined in section 100.261 (1) (c) of the statutes, as created by this act,

15   of an electronic computing device, as defined in section 100.261 (1) (a) of the statutes,

16   as created by this act for the period ending on June 30, 2001.

17   **SECTION 7. Effective dates.** This act takes effect on the day after publication,

18   except as follows:

19   (1) The repeal of section 20.115 (1) (d) of the statutes takes effect on July 1,

20   2001.

21   **(END)**

1999–2000 **DRAFTING INSERT**   LRB–1852/1ins
FROM THE   RPN & JEO:....:....
LEGISLATIVE REFERENCE BUREAU

INSERT ANALYSIS 3–A

False, deceptive or misleading statements or representations concerning year 2000 readiness

This bill prohibits a person from making any statement or representation with regard to the year 2000 readiness of an electronic computing device which is false, misleading or deceptive. Under the bill, it is false, misleading or deceptive to state or represent that an electronic computing device is able to process, transmit or receive date data from, into and between the 20th and 21st centuries and during the years 1999 and 2000, and from leap year calculations if the electronic computing device cannot do so without modification or alteration.

A person who violates this prohibition may be subject to a forfeiture (civil monetary penalty) of not less than $100 nor more than $10,000. In addition, a person adversely affected by the false, misleading or deceptive statement or representation may bring an action for relief and may be awarded one or more of the following: damages of not less than $500 nor more than twice the amount of actual damages; injunctive or declaratory relief; specific performance; and reasonable attorney fees. In addition, the department of justice at the request of the department of agriculture, trade and consumer protection (DATCP) or a district attorney may bring an action to restrain a person from violating the prohibition created in the bill and to award a person damaged by any violation twice the amount of damages the person suffered.

Finally, under the bill DATCP may request any person to provide DATCP with information about the year 2000 readiness of any electronic computing device that the person sells or offers to sell or has ever sold or offered to sell in this state. If a person fails to respond to an information request from DATCP or if the person provides false, misleading or deceptive information to DATCP, then any person adversely affected by the failure of that electronic computing device to be year 2000 ready may bring an action against the person who failed to respond or who responded with false, misleading or deceptive information. The court may award the injured party appropriate relief, including damages of not less than $500 nor more than twice the amount of actual damages, injunctive or declaratory relief, specific performance and reasonable attorney fees.

1   contingency plans for responding to year 2000 computer problems; granting

2   rule-making authority; and providing a penalty.

Analysis by the Legislative Reference Bureau

Information gathering

This bill permits any state or local governmental unit which or officer who has regulatory power over any person to require that person to provide to the unit or officer information relating to year 2000 processing. Year 2000 processing information includes any communication made by the person to any other person or persons: 1) concerning an assessment, projection or estimate relating to, or plans, objectives or timetables for implementing or verifying year 2000 processing capabilities of an entity, product, service or set of products or services; 2) concerning test plans, dates or results, or operational problems or solutions related to year 2000 processing by products or services that incorporate or otherwise utilize products; 3) concerning the correction or avoidance of a year 2000 processing failure in computer hardware, a computer system, a component of a computer system, a computer program or software or services utilizing any computer hardware, system, component, program or software or services; or 4) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities. The information may only pertain to a matter relating to public health or safety that is regulated by that authority or a matter relating to public health or safety that has an effect upon a matter that is regulated by that authority. The bill defines "year 2000 processing" as processing, transmitting or receiving date data from, into and between the 20th and 21st centuries and during the years 1999 and 2000, and from leap year calculations. Currently, no such authority exists.

Under the bill, if any business fails to provide the information required, knowingly gives a false answer to a request for information or evades the answer to any request for information, each director, partner or proprietor of that business is subject to a forfeiture (civil penalty) of $100 for each offense. Each day of violation constitutes a separate offense.

The bill requires each state or local governmental unit which or officer who receives information under the bill to withhold from access all information provided to the unit or officer under the public records access law, except that the unit or officer must provide the information to the department of administration (DOA) upon written request of the department and may, upon written consent of a person who provides information to the unit or officer, provide the information to another specified person or to any person.

This bill provides that no year 2000 processing information provided by a person at the request of a governmental unit that has regulatory power over the person is admissible in any civil action or proceeding. Any other year 2000 processing information may be offered in evidence only if the information is in a statement made by a person who knew that the statement was false, misleading or deceptive or that was made with reckless disregard as to the truth or falsity of the

Insert
Analysis
3-13

BILL

[handwritten margin note: or if the information is offered in an action relating to false, deceptive or misleading statements or representations concerning year 2000 readiness]

statement, if the information is in a republished year 2000 statement that the person who republished the statement knew was false, misleading or deceptive, if the information is in a statement made by a person who was compensated for providing a year 2000 statement as part of a contractual service or made by a person when soliciting a consumer, ~~or~~ if the information is offered in any action brought by the state or a local governmental unit acting in regulatory, supervisory or enforcement capacity.

State and local governmental liability

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. A state or local governmental officer, employe or agent who is sued for a negligent action or omission may be protected from liability currently if the officer, employe or agent makes a good faith attempt to resolve the problem that results in the act or omission. No punitive damages (damages not resulting from direct or indirect loss but awarded, instead, as punishment for wrongful conduct) may be awarded in any lawsuit against a state or local governmental officer, employe or agent 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 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 process, transmit or receive date data from, into and between the 20th and 21st centuries and during the years 1999 and 2000 and from leap year calculations if the unit had a remediation plan in effect at the time of the act or omission that was designed to prevent the failure and the unit or the officer, employe or agent made a reasonable effort to find, identify and replace or correct any electronic computing device that may have contributed to the failure. The bill also voids any contrary provision of a contract entered into on or after the day on which the bill becomes law. 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.

Year 2000 impact statements

This bill provides that whenever a bill is introduced in either house of the legislature that would have an impact on the ability of a state governmental unit, a local governmental unit or any other person to avoid a year 2000 problem, as defined

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1852/P1dn

JK/RN/MJ/RK/JO/RK/PN:jlg:ch

January 19, 1999

Untrue, deceptive or misleading statements

Please note the changes that I made in s. 100.261 (4), as created in this draft. I rewrote that provision for clarity purposes only. The changes do not affect the substance or intent of the provision.

Robin N. Kite
Legislative Attorney
266–7291

Year 2000 impact statements

The standard for triggering the requirement for a year 2000 impact statement requires a "significant impact". I'm not sure whether either the LRB or DOA can accurately make that determination at the time of introduction.

The language of proposed s. 13.0992 (2) to the effect "that a bill for which a year 2000 impact statement is required or requested may not be heard or reported by a standing committee to which the bill is referred until the statement is received" creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 363–369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

Atty. Peter J. Dykman
Deputy Chief
266–7098

Admissibility of year 2000 and leap year processing statements

I redrafted this proposal with some changes. Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless

Proposal's. "104.17(1)(d)

disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Subsection (1) (b) 4. was added although I cannot find anything like it in the federal law.

Proposal's. "104.17"

2. I had the same problem with sub. (3) (c), which I added as requested, except that this exception creates other problems. This language seems to remove the immunity from everyone, because everyone is going to be compensated for issuing a year 2000 statement. That will be part of the person's job. This language has to be narrowed in some way, but since I do not know your intent, I did not know how to narrow the language.

Section 100.264 and sec

There appears to be one discrepancy between this draft and LRBs0002. This draft allows the use of a year 2000 statement (which is defined) made by a person who knew the statement was false.... LRBs0002 prohibits a person from making any year 2000 statement (which is not defined as in LRB-1118) which is false.... The definitions create some ambiguity and the knowledge of the person is important in LRB-1118, but not in LRBs0002. Is this okay?

P-N Inserts A-B

Testing of contingency emergency planning

Please note that s. 16.47 (2), stats., states that neither house may pass any bill containing an appropriation, increasing the cost of state government or decreasing state revenues by more than $10,000 annually until both houses pass the executive budget bill, except that the governor or joint committee on finance or, under certain circumstances, the committee on organization of either house may enact emergency appropriation bills prior to the passage of the executive budget bill.

Note that if this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will be repealed by action of the budget bill (which repeals and recreates the appropriations schedule).

Robert P. Nelson
Senior Legislative Attorney
267–7511

Information gathering

1. This draft does not prescribe a penalty for a violation of proposed s. 134.92 (2) by any person who is ordered to provide a 'Y2K' statement; it only prescribes a penalty for an officer, employe or agent, other than a director, of such a person. Is this consistent with your intent? Do you wish to limit the scope of proposed s. 134.92 to persons other than individuals?

2. I did not provide a penalty for failure to provide access to private records, corresponding to the penalty prescribed under s. 196.65 (3) (b) 5., stats., because the draft does not authorize authorities to examine such records. If you intend to permit authorities to examine such records, please let me know. If you do, you may wish to grant them subpoena powers.

3. The instructions did not specify whether access to 'Y2K' information by DOA is to be authorized or required. This draft provides, in proposed s. 134.92 (4) (b), that access to such information by DOA is mandatory if DOA requests access.

4. I have not used the term "special year 2000 data gathering request" in this draft because I did not find it necessary or expedient to use it and also because the term as used in federal law refers to an order rather than a request.

P/· 5. This draft incorporates the substance of the federal terms "year 2000 statement" *with the exception of proposed* and "year 2000 processing". Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

P 2· Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board* *134.92* *v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity *(1)(f) 4 ✓* of this paragraph as applied to participants in an offense. *actual*

With respect to your concern that 'Y2K' statements should relate only to matters that may contain a 'Y2K' error, the definition of a "year 2000 statement" in proposed s. 134.92 (1) (f) is limited only to matters relating to "year 2000 processing", which is defined in proposed s. 134.92 (1) (e). This language is essentially taken from the federal law. The federal law is broadly drafted. The language in LRB–1091/4 is more specifically directed at computer failures. However, I did not use this language because I understood that you wanted the statements provided for in this draft to correspond to the federal statements so that potentially the same statements can be used to comply with both federal and state law.

1. This draft includes the change you requested which limits the scope of the evidentiary provision to civil actions and proceedings only.

P 3· 2. Concerning the change that was made in LRB–1090/6 in the definition of "Year 2000 processing", I realize this change reflects the federal text but I intentionally departed from that text because syntactically it doesn't work. Because "calculating" is included in the definition of "processing" the text results in the following: "'Year 2000 processing' means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations". Also, the federal language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future. As a result, the relating clause of the draft is no longer accurate. This issue is also present in the other drafts employing this language.

Liability for processing failures

1. *NOT* Unlike the other 'Y2K' drafts, this draft does not necessarily cover all incorrect dates occurring after the year 2000 because of a year 2000–type failure. For example it would not cover a date in the year 1901 that is incorrectly substituted for a date in the year 2001 unless the substitution is caused by the failure of a computing device to recognize, process, distinguish or interpret the year 2000. Also, unlike the other drafts, this draft covers only reactive 'Y2K' errors (recognition, processing, distinguishing or interpretation) as opposed to initiation errors (production, generation, calculation). Please let me know if this is not in accord with your intent.

, calculating, comparing, sequencing, displaying, storing, transmitting or receiving)

involving the production or generation of data

2. 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.

2. ¶ Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'–related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable effort to find and rectify flawed chips. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

electronic computing devices

3. ¶ You may also wish to consider the following collateral issues:

a. 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. This draft eliminates that option. 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 will cost that exposure 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.

b. 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 to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. 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' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. 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
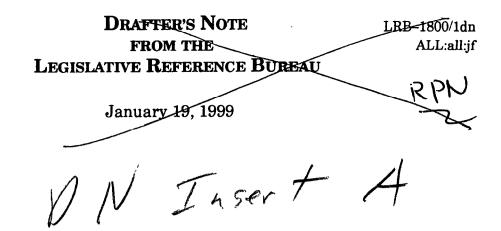
under this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. 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.

Concerning the definition of "remediation plan", ~~as mentioned in the drafter's note to LRB–1090/7,~~ because "calculate" is included in the definition of "process", the text results in the following: "Remediation plan' means a written document ... developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future. ~~As a result, the relating clause of the draft is no longer accurate.~~

the term

the term

'Y2K'

Jeffery T. Kuesel
Assistant Chief Counsel
266–6778

Ø N Insert A

Admissibility of year 2000 and leap year processing statements

1. Wisconsin statutes do not use the term "reckless indifference". I changed that term to what is used in Wisconsin: "reckless disregard". I left out the term "entity" because it adds nothing to the meaning of the draft and is confusing if you look at what it means in a dictionary. (An independent being or existence.) Proposed s. 904.17 (1) (d) 4. was added although I cannot find anything like it in the federal law.

2. There are no exceptions to the evidentiary exclusion created for information provided to authorities under proposed s. 134.92 (2). At the same time, there *are* exceptions to the evidentiary exclusion created for year 2000 statements generally under proposed s. 904.17, as it was originally drafted. This draft combines the two exclusions by maintaining the total exclusion of information provided to authorities under proposed s. 134.92 (2) and by providing for the limited admissibility for all other year 2000 statements. *See* proposed s. 904.17 (2) and (3). Is that your intent, or should the circumstances for admitting year 2000 statements under proposed s. 940.17 (3) also apply to information provided to authorities under proposed s. 134.92 (2)?

Do you intend to require exclusion of the *information* provided in statements made to authorities, or do you intend only to prevent a civil litigant from getting at those statements during the civil litigation discovery process? By creating a blanket exclusion for *information* provided in statements to authorities, a person could bury all unfavorable information about its year 2000 preparations in a statement to an authority and then the information could never be used in a civil proceeding, no matter how false or misleading and no matter whether the information is available from sources other than the statement made to an authority.

Robert P. Nelson
Senior Legislative Attorney
267-7511

Information gathering

1. This draft incorporates the federal terms "year 2000 statement" and "year 2000 processing" with the exception of proposed s. 134.92 (1) (f) 4. Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

D–NOTE INSERT B:

In addition, this draft creates a new provision allowing the admission of year 2000 processing information in an action brought under proposed s. 100.261. See proposed s. 904.17 (3) (f). We believe that such a provision is necessary given the interaction of proposed ss. 100.261 and 904.17. Specifically, without such a provision, it is unclear how a person could proceed with an action under s. 100.261 because year 2000 processing statements are generally inadmissible unless they are false, misleading or deceptive—the very things that a person must prove in an action under proposed s. 100.261. Does proposed s. 904.17 (3) (f) effect your intent?

January 19, 1999

Admissibility of year 2000 and leap year processing statements

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2. There are no exceptions to the evidentiary exclusion created for information provided to authorities under proposed s. 134.92 (2). At the same time, there *are* exceptions to the evidentiary exclusion created for year 2000 statements generally under proposed s. 904.17, as it was originally drafted. This draft combines the two exclusions by maintaining the total exclusion of information provided to authorities under proposed s. 134.92 (2) and by providing for the limited admissibility for all other year 2000 statements. *See* proposed s. 904.17 (2) and (3). Is that your intent, or should the circumstances for admitting year 2000 statements under proposed s. 940.17 (3) also apply to information provided to authorities under proposed s. 134.92 (2)?

Do you intend to require exclusion of the *information* provided in statements made to authorities, or do you intend only to prevent a civil litigant from getting at those statements during the civil litigation discovery process? By creating a blanket exclusion for *information* provided in statements to authorities, a person could bury all unfavorable information about its year 2000 preparations in a statement to an authority and then the information could never be used in a civil proceeding, no matter how false or misleading and no matter whether the information is available from sources other than the statement made to an authority.

In addition, this draft creates a new provision allowing the admission of year 2000 processing information in an action brought under proposed s. 100.261. See proposed s. 904.17 (3) (f). We believe that such a provision is necessary given the interaction of proposed ss. 100.261 and 904.17. Specifically, without such a provision, it is unclear how a person could proceed with an action under s. 100.261 because year 2000 processing statements are generally inadmissible unless they are false, misleading or deceptive—the very things that a person must prove in an action under proposed s. 100.261. Does proposed s. 904.17 (3) (f) effect your intent?

Testing of contingency emergency planning

Please note that s. 16.47 (2), stats., states that neither house may pass any bill containing an appropriation, increasing the cost of state government or decreasing

state revenues by more than $10,000 annually until both houses pass the executive budget bill, except that the governor or joint committee on finance or, under certain circumstances, the committee on organization of either house may enact emergency appropriation bills prior to the passage of the executive budget bill.

Note that if this bill is introduced and enacted as an emergency measure prior to passage of the budget, the appropriation set forth in this bill will be repealed by action of the budget bill (which repeals and recreates the appropriations schedule).

Robert P. Nelson
Senior Legislative Attorney
267–7511

Information gathering

1. This draft incorporates the federal terms "year 2000 statement" and "year 2000 processing" with the exception of proposed s. 134.92 (1) (f) 4. Note that these terms are very broad, and have the effect of extending the scope of the draft to apply to noncomputer issues.

2. Application of a penalty to individuals who do not participate in an offense under proposed s. 134.92 (3) (b) may not be enforceable in this state under *Elections Board v. Ward*, 105 Wis.2d 543 (1982). However, this principle should not impair the validity of this paragraph as applied to actual participants in an offense.

3. Concerning the definition of "Year 2000 processing", I realize this change reflects the federal text but syntactically it doesn't work. Because "calculating" is included in the definition of "processing" the text results in the following: "'Year 2000 processing' means the [calculating, comparing, sequencing, displaying, storing], transmitting or receiving of date data ... from leap year calculations". Also, the federal language extends the scope of the draft beyond the 'Y2K' issue to apply to all leap year calculations regardless of the year to which they apply, past or future.

Liability for processing failures

1. This draft covers only reactive 'Y2K' errors (processing, calculating, comparing, sequencing, displaying, storing, transmitting or receiving) as opposed to initiation errors involving the production or generation of data. Please let me know if this is not in accord with your intent.

2. Currently, the major exception to the sovereign immunity bar against state governmental units is to assert that a state governmental officer, employe or agent was negligent in the performance of a ministerial (nondiscretionary) duty. A state or local governmental officer, employe or agent will generally not be found negligent if the officer, employe or agent can show that he or she made a good faith attempt to resolve the problem that results in the allegedly negligent act or omission. This draft overlays this rule of law with a new rule that is narrower, for purposes of certain 'Y2K'–related acts or omissions, in that "good faith" means: a) a remediation plan; and b) a reasonable

effort to find and rectify flawed electronic computing devices. This may have the effect of limiting a finding of good faith under these circumstances if these two elements are not present.

3. You may also wish to consider the following collateral issues:

a. 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. This draft eliminates that option. 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 will cost that exposure 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.

b. 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 to which an injured party is now legally entitled such as a governmental benefit or payment in the ordinary course of business. It is possible that denial of all general damages may not be constitutionally enforceable. You may therefore wish to consider limiting 'Y2K' liability for consequential damages only.

c. 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' problem. This draft deletes this requirement in the situation covered by the draft because where there is no liability there is no liability for interest. 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 this draft it is still possible to recover damages in some 'Y2K' situations, you may wish to provide an exemption for interest recovery in those situations.

d. 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.

Concerning the definition of "remediation plan", because the term "calculate" is included in the definition of the term "process", the text results in the following: "'Remediation plan' means a written document ... developed to implement changes to ensure that electronic computing devices will accurately [calculate, compare, sequence, display, store], transmit and receive date data ... from leap year calculations." The syntax in this sentence needs to be corrected. Also, this language

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                                   Jeffery T. Kuesel
                                   Assistant Chief Counsel
                                   266–6778

January 19, 1999

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Jeffery T. Kuesel
Assistant Chief Counsel
266–6778

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: 1/20/99

To: Representative Schneider

Relating to LRB drafting number: LRB-1852

Topic
Year 2000 / leap year changes

Subject(s)
State Government - miscellaneous, Military Affairs, Legislature - miscellaneous, Courts - immunity liablty, Munis - miscellaneous, Counties, Trade Regulation

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, Managing Attorney
Telephone: (608) 266-6778