

HOUSE BILL NO. 1142

Introduced by

Representatives Pyle, Stemen, M. Ruby, Schauer

Senators Roers, Thomas

1 A BILL for an Act to amend and reenact sections 32-12.1-03 and 32-12.2-02 of the North
2 Dakota Century Code, relating to the statutory caps for liability of political subdivisions and the
3 state; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 32-12.1-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-12.1-03. Liability of political subdivisions - Limitations. (Effective through July 31,**
8 **~~2027~~June 30, 2026)**

- 9 1. Each political subdivision is liable for money damages for injuries when the injuries are
10 proximately caused by the negligence or wrongful act or omission of any employee
11 acting within the scope of the employee's employment or office under circumstances
12 in which the employee would be personally liable to a claimant in accordance with the
13 laws of this state, or injury caused from some condition or use of tangible property,
14 real or personal, under circumstances in which the political subdivision, if a private
15 person, would be liable to the claimant. The enactment of a law, rule, regulation, or
16 ordinance to protect any person's health, safety, property, or welfare does not create a
17 duty of care on the part of the political subdivision, its employees, or its agents, if that
18 duty would not otherwise exist.
- 19 2. The liability of political subdivisions under this chapter is limited to a total of ~~three-~~
20 ~~hundred seventy-five thousand~~four hundred sixty-eight thousand seven hundred fifty
21 dollars per person and one million ~~eight hundred seventy-five thousand~~ dollars for any
22 number of claims arising from any single occurrence regardless of the number of
23 political subdivisions, or employees of such political subdivisions, which are involved in
24 that occurrence. A political subdivision may not be held liable, or be ordered to

- 1 indemnify an employee held liable, for punitive or exemplary damages. The liability-
2 limits under this subsection must be adjusted annually as follows:
- 3 a. ~~On July 1, 2023, a total of four hundred six thousand two hundred and fifty dollars~~
4 ~~per person and one million six hundred twenty-five thousand dollars for any~~
5 ~~single occurrence.~~
- 6 b. ~~On July 1, 2024, a total of four hundred thirty-seven thousand five hundred~~
7 ~~dollars per person and one million seven hundred fifty thousand dollars for any~~
8 ~~single occurrence.~~
- 9 c. ~~On July 1, 2025, a total of four hundred sixty-eight thousand seven hundred fifty~~
10 ~~dollars per person and one million eight hundred seventy-five thousand dollars~~
11 ~~per occurrence.~~
- 12 d. ~~On July 1, 2026, a total of five hundred thousand dollars per person and two~~
13 ~~million dollars per occurrence.~~
- 14 3. A political subdivision or a political subdivision employee may not be held liable under
15 this chapter for any of the following claims:
- 16 a. A claim based upon an act or omission of a political subdivision employee
17 exercising due care in the execution of a valid or invalid statute or regulation.
- 18 b. The decision to undertake or the refusal to undertake any legislative or
19 quasi-legislative act, including the decision to adopt or the refusal to adopt any
20 statute, charter, ordinance, order, regulation, resolution, or resolve.
- 21 c. The decision to undertake or the refusal to undertake any judicial or quasi-judicial
22 act, including the decision to grant, to grant with conditions, to refuse to grant, or
23 to revoke any license, permit, order, or other administrative approval or denial.
- 24 d. The decision to perform or the refusal to exercise or perform a discretionary
25 function or duty, whether or not such discretion is abused and whether or not the
26 statute, charter, ordinance, order, resolution, regulation, or resolve under which
27 the discretionary function or duty is performed is valid or invalid.
- 28 e. Injury directly or indirectly caused by a person who is not employed by the
29 political subdivision.
- 30 f. A claim relating to injury directly or indirectly caused by the performance or
31 nonperformance of a public duty, including:

- 1 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
2 act regarding compliance with or the violation of any law, rule, regulation, or
3 any condition affecting health or safety.
- 4 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
5 sentencing, parole, probation, or juvenile supervision.
- 6 (3) Providing or failing to provide law enforcement services in the ordinary
7 course of a political subdivision's law enforcement operations.
- 8 (4) Providing or failing to provide fire protection services in the ordinary course
9 of a political subdivision's fire protection operations.
- 10 g. "Public duty" does not include action of the political subdivision or a political
11 subdivision employee under circumstances in which a special relationship can be
12 established between the political subdivision and the injured party. A special
13 relationship is demonstrated if all of the following elements exist:
- 14 (1) Direct contact between the political subdivision and the injured party.
- 15 (2) An assumption by the political subdivision, by means of promises or actions,
16 of an affirmative duty to act on behalf of the party who allegedly was injured.
- 17 (3) Knowledge on the part of the political subdivision that inaction of the political
18 subdivision could lead to harm.
- 19 (4) The injured party's justifiable reliance on the political subdivision's
20 affirmative undertaking, occurrence of the injury while the injured party was
21 under the direct control of the political subdivision, or the political
22 subdivision action increases the risk of harm.
- 23 4. This chapter does not obligate political subdivisions for an amount that is more than
24 the limitations upon liability imposed by this chapter. Subject to this chapter, any
25 payments to persons constitute payment in full of any compromised claim or judgment
26 or any final judgment under this chapter.
- 27 5. Notwithstanding this chapter, a political subdivision or its insurance carrier is not liable
28 for any claim arising out of the conduct of a ridesharing arrangement, as defined in
29 section 8-02-07.
- 30 6. A political subdivision is not liable for any claim based on an act or omission in the
31 designation, repair, operation, or maintenance of a minimum maintenance road if that

1 designation has been made in accordance with sections 24-07-35 through 24-07-37
2 and if the road has been maintained at a level to serve occasional and intermittent
3 traffic.

4 7. Any party to an action against a political subdivision or a political subdivision employee
5 acting within the scope of employment as defined in this chapter shall comply with
6 applicable rules of civil procedure when requesting documents or other information in
7 the possession or control of the political subdivision.

8 **Liability of political subdivisions - Limitations. (Effective after ~~July 31, 2027~~ June 30,**
9 **2026)**

10 1. Each political subdivision is liable for money damages for injuries when the injuries are
11 proximately caused by the negligence or wrongful act or omission of any employee
12 acting within the scope of the employee's employment or office under circumstances
13 in which the employee would be personally liable to a claimant in accordance with the
14 laws of this state, or injury caused from some condition or use of tangible property,
15 real or personal, under circumstances in which the political subdivision, if a private
16 person, would be liable to the claimant. The enactment of a law, rule, regulation, or
17 ordinance to protect any person's health, safety, property, or welfare does not create a
18 duty of care on the part of the political subdivision, its employees, or its agents, if that
19 duty would not otherwise exist.

20 2. The liability of political subdivisions under this chapter is limited to a total of ~~two~~five
21 hundred ~~fifty~~ thousand dollars per person and ~~one~~two million dollars for any number of
22 claims arising from any single occurrence regardless of the number of political
23 subdivisions, or employees of such political subdivisions, which are involved in that
24 occurrence. A political subdivision may not be held liable, or be ordered to indemnify
25 an employee held liable, for punitive or exemplary damages.

26 3. A political subdivision or a political subdivision employee may not be held liable under
27 this chapter for any of the following claims:

28 a. A claim based upon an act or omission of a political subdivision employee
29 exercising due care in the execution of a valid or invalid statute or regulation.

- 1 b. The decision to undertake or the refusal to undertake any legislative or
2 quasi-legislative act, including the decision to adopt or the refusal to adopt any
3 statute, charter, ordinance, order, regulation, resolution, or resolve.
- 4 c. The decision to undertake or the refusal to undertake any judicial or quasi-judicial
5 act, including the decision to grant, to grant with conditions, to refuse to grant, or
6 to revoke any license, permit, order, or other administrative approval or denial.
- 7 d. The decision to perform or the refusal to exercise or perform a discretionary
8 function or duty, whether or not such discretion is abused and whether or not the
9 statute, charter, ordinance, order, resolution, regulation, or resolve under which
10 the discretionary function or duty is performed is valid or invalid.
- 11 e. Injury directly or indirectly caused by a person who is not employed by the
12 political subdivision.
- 13 f. A claim relating to injury directly or indirectly caused by the performance or
14 nonperformance of a public duty, including:
- 15 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
16 act regarding compliance with or the violation of any law, rule, regulation, or
17 any condition affecting health or safety.
- 18 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
19 sentencing, parole, probation, or juvenile supervision.
- 20 (3) Providing or failing to provide law enforcement services in the ordinary
21 course of a political subdivision's law enforcement operations.
- 22 (4) Providing or failing to provide fire protection services in the ordinary course
23 of a political subdivision's fire protection operations.
- 24 g. "Public duty" does not include action of the political subdivision or a political
25 subdivision employee under circumstances in which a special relationship can be
26 established between the political subdivision and the injured party. A special
27 relationship is demonstrated if all of the following elements exist:
- 28 (1) Direct contact between the political subdivision and the injured party.
- 29 (2) An assumption by the political subdivision, by means of promises or actions,
30 of an affirmative duty to act on behalf of the party who allegedly was injured.

1 (3) Knowledge on the part of the political subdivision that inaction of the political
2 subdivision could lead to harm.

3 (4) The injured party's justifiable reliance on the political subdivision's
4 affirmative undertaking, occurrence of the injury while the injured party was
5 under the direct control of the political subdivision, or the political
6 subdivision action increases the risk of harm.

7 4. This chapter does not obligate political subdivisions for an amount that is more than
8 the limitations upon liability imposed by this chapter. Subject to this chapter, any
9 payments to persons constitute payment in full of any compromised claim or judgment
10 or any final judgment under this chapter.

11 5. Notwithstanding this chapter, a political subdivision or its insurance carrier is not liable
12 for any claim arising out of the conduct of a ridesharing arrangement, as defined in
13 section 8-02-07.

14 6. A political subdivision is not liable for any claim based on an act or omission in the
15 designation, repair, operation, or maintenance of a minimum maintenance road if that
16 designation has been made in accordance with sections 24-07-35 through 24-07-37
17 and if the road has been maintained at a level to serve occasional and intermittent
18 traffic.

19 7. Any party to an action against a political subdivision or a political subdivision employee
20 acting within the scope of employment as defined in this chapter shall comply with
21 applicable rules of civil procedure when requesting documents or other information in
22 the possession or control of the political subdivision.

23 **SECTION 2. AMENDMENT.** Section 32-12.2-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **32-12.2-02. Liability of the state - Limitations - Statute of limitations. (Effective**
26 **through July 31, 2027June 30, 2026)**

27 1. The state may only be held liable for money damages for an injury proximately caused
28 by the negligence or wrongful act or omission of a state employee acting within the
29 employee's scope of employment under circumstances in which the employee would
30 be personally liable to a claimant in accordance with the laws of this state, or an injury
31 caused from some condition or use of tangible property under circumstances in which

1 the state, if a private person, would be liable to the claimant. No claim may be brought
2 against the state or a state employee acting within the employee's scope of
3 employment except a claim authorized under this chapter or otherwise authorized by
4 the legislative assembly. The enactment of a law, rule, or regulation to protect any
5 person's health, safety, property, or welfare does not create a duty of care on the part
6 of the state, its employees, or its agents, if that duty would not otherwise exist.

7 2. The liability of the state under this chapter is limited to a total of ~~three hundred~~
8 ~~seventy-five thousand~~four hundred sixty-eight thousand seven hundred fifty dollars per
9 person and one million eight hundred seventy-five thousand dollars for any number of
10 claims arising from any single occurrence. The state may not be held liable, or be
11 ordered to indemnify a state employee held liable, for punitive or exemplary damages.
12 Any amount of a judgment against the state in excess of the one million eight hundred
13 seventy-five thousand dollar limit imposed under this subsection may be paid only if
14 the legislative assembly adopts an appropriation authorizing payment of all or a
15 portion of that amount. A claimant may present proof of the judgment to the director of
16 the office of management and budget who shall include within the proposed budget for
17 the office of management and budget a request for payment for the portion of the
18 judgment in excess of the limit under this section at the next regular session of the
19 legislative assembly after the judgment is rendered. ~~The liability limits under this~~
20 ~~subsection must be adjusted annually as follows:~~

- 21 a. ~~On July 1, 2023, a total of four hundred six thousand two hundred and fifty dollars~~
22 ~~per person and one million six hundred twenty-five thousand dollars for any~~
23 ~~single occurrence.~~
- 24 b. ~~On July 1, 2024, a total of four hundred thirty-seven thousand five hundred~~
25 ~~dollars per person and one million seven hundred fifty thousand dollars for any~~
26 ~~single occurrence.~~
- 27 e. ~~On July 1, 2025, a total of four hundred sixty-eight thousand seven hundred fifty~~
28 ~~dollars per person and one million eight hundred seventy-five thousand dollars~~
29 ~~per occurrence.~~
- 30 d. ~~On July 1, 2026, a total of five hundred thousand dollars per person and two~~
31 ~~million dollars per occurrence.~~

- 1 3. Neither the state nor a state employee may be held liable under this chapter for any of
2 the following claims:
- 3 a. A claim based upon an act or omission of a state employee exercising due care
4 in the execution of a valid or invalid statute or rule.
- 5 b. A claim based upon a decision to exercise or perform or a failure to exercise or
6 perform a discretionary function or duty on the part of the state or its employees,
7 regardless of whether the discretion involved is abused or whether the statute,
8 order, rule, or resolution under which the discretionary function or duty is
9 performed is valid or invalid. Discretionary acts include acts, errors, or omissions
10 in the design of any public project but do not include the drafting of plans and
11 specifications that are provided to a contractor to construct a public project.
- 12 c. A claim resulting from the decision to undertake or the refusal to undertake any
13 legislative or quasi-legislative act, including the decision to adopt or the refusal to
14 adopt any statute, order, rule, or resolution.
- 15 d. A claim resulting from a decision to undertake or a refusal to undertake any
16 judicial or quasi-judicial act, including a decision to grant, to grant with conditions,
17 to refuse to grant, or to revoke any license, permit, order, or other administrative
18 approval or denial.
- 19 e. A claim relating to injury directly or indirectly caused by a person who is not
20 employed by the state.
- 21 f. A claim relating to injury directly or indirectly caused by the performance or
22 nonperformance of a public duty, including:
- 23 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
24 act regarding compliance with or the violation of any law, rule, regulation, or
25 any condition affecting health or safety.
- 26 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
27 sentencing, parole, probation, or juvenile supervision.
- 28 (3) Providing or failing to provide law enforcement services in the ordinary
29 course of a state's law enforcement operations.
- 30 g. "Public duty" does not include action of the state or a state employee under
31 circumstances in which a special relationship can be established between the

1 state and the injured party. A special relationship is demonstrated if all of the
2 following elements exist:

3 (1) Direct contact between the state and the injured party.

4 (2) An assumption by the state, by means of promises or actions, of an
5 affirmative duty to act on behalf of the party who allegedly was injured.

6 (3) Knowledge on the part of the state that inaction of the state could lead to
7 harm.

8 (4) The injured party's justifiable reliance on the state's affirmative undertaking,
9 occurrence of the injury while the injured party was under the direct control
10 of the state, or the state action increases the risk of harm.

11 h. A claim resulting from the assessment and collection of taxes.

12 i. A claim resulting from snow or ice conditions, water, or debris on a highway or on
13 a public sidewalk that does not abut a state-owned building or parking lot, except
14 when the condition is affirmatively caused by the negligent act of a state
15 employee.

16 j. A claim resulting from any injury caused by a wild animal in its natural state.

17 k. A claim resulting from the condition of unimproved real property owned or leased
18 by the state.

19 l. A claim resulting from the loss of benefits or compensation due under a program
20 of public assistance.

21 m. A claim resulting from the reasonable care and treatment, or lack of care and
22 treatment, of a person at a state institution where reasonable use of available
23 appropriations has been made to provide care.

24 n. A claim resulting from damage to the property of a patient or inmate of a state
25 institution.

26 o. A claim resulting from any injury to a resident or an inmate of a state institution if
27 the injury is caused by another resident or inmate of that institution.

28 p. A claim resulting from environmental contamination, except to the extent that
29 federal environmental law permits the claim.

30 q. A claim resulting from a natural disaster, an act of God, a military action, or an act
31 or omission taken as part of a disaster relief effort.

- 1 r. A claim for damage to property owned by the state.
- 2 s. A claim for liability assumed under contract, except this exclusion does not apply
- 3 to liability arising from a state employee's operation of a rental vehicle if the loss
- 4 is not covered by the state employee's personal insurance or by the vehicle rental
- 5 company.
- 6 4. An action brought under this chapter must be commenced within the period provided
- 7 in section 28-01-22.1.
- 8 5. This chapter does not create or allow any claim that does not exist at common law or
- 9 has not otherwise been created by law as of April 22, 1995.

10 **Liability of the state - Limitations - Statute of limitations. (Effective after July 31,**
11 **~~2027~~ June 30, 2026)**

- 12 1. The state may only be held liable for money damages for an injury proximately caused
- 13 by the negligence or wrongful act or omission of a state employee acting within the
- 14 employee's scope of employment under circumstances in which the employee would
- 15 be personally liable to a claimant in accordance with the laws of this state, or an injury
- 16 caused from some condition or use of tangible property under circumstances in which
- 17 the state, if a private person, would be liable to the claimant. No claim may be brought
- 18 against the state or a state employee acting within the employee's scope of
- 19 employment except a claim authorized under this chapter or otherwise authorized by
- 20 the legislative assembly. The enactment of a law, rule, or regulation to protect any
- 21 person's health, safety, property, or welfare does not create a duty of care on the part
- 22 of the state, its employees, or its agents, if that duty would not otherwise exist.
- 23 2. The liability of the state under this chapter is limited to a total of ~~two hundred fifty five~~
- 24 hundred thousand dollars per person and ~~one~~two million dollars for any number of
- 25 claims arising from any single occurrence. The state may not be held liable, or be
- 26 ordered to indemnify a state employee held liable, for punitive or exemplary damages.
- 27 Any amount of a judgment against the state in excess of the ~~one~~two million dollar limit
- 28 imposed under this subsection may be paid only if the legislative assembly adopts an
- 29 appropriation authorizing payment of all or a portion of that amount. A claimant may
- 30 present proof of the judgment to the director of the office of management and budget
- 31 who shall include within the proposed budget for the office of management and budget

1 a request for payment for the portion of the judgment in excess of the limit under this
2 section at the next regular session of the legislative assembly after the judgment is
3 rendered.

4 3. Neither the state nor a state employee may be held liable under this chapter for any of
5 the following claims:

6 a. A claim based upon an act or omission of a state employee exercising due care
7 in the execution of a valid or invalid statute or rule.

8 b. A claim based upon a decision to exercise or perform or a failure to exercise or
9 perform a discretionary function or duty on the part of the state or its employees,
10 regardless of whether the discretion involved is abused or whether the statute,
11 order, rule, or resolution under which the discretionary function or duty is
12 performed is valid or invalid. Discretionary acts include acts, errors, or omissions
13 in the design of any public project but do not include the drafting of plans and
14 specifications that are provided to a contractor to construct a public project.

15 c. A claim resulting from the decision to undertake or the refusal to undertake any
16 legislative or quasi-legislative act, including the decision to adopt or the refusal to
17 adopt any statute, order, rule, or resolution.

18 d. A claim resulting from a decision to undertake or a refusal to undertake any
19 judicial or quasi-judicial act, including a decision to grant, to grant with conditions,
20 to refuse to grant, or to revoke any license, permit, order, or other administrative
21 approval or denial.

22 e. A claim relating to injury directly or indirectly caused by a person who is not
23 employed by the state.

24 f. A claim relating to injury directly or indirectly caused by the performance or
25 nonperformance of a public duty, including:

26 (1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so
27 act regarding compliance with or the violation of any law, rule, regulation, or
28 any condition affecting health or safety.

29 (2) Enforcing, monitoring, or failing to enforce or monitor conditions of
30 sentencing, parole, probation, or juvenile supervision.

- 1 (3) Providing or failing to provide law enforcement services in the ordinary
2 course of a state's law enforcement operations.
- 3 g. "Public duty" does not include action of the state or a state employee under
4 circumstances in which a special relationship can be established between the
5 state and the injured party. A special relationship is demonstrated if all of the
6 following elements exist:
- 7 (1) Direct contact between the state and the injured party.
- 8 (2) An assumption by the state, by means of promises or actions, of an
9 affirmative duty to act on behalf of the party who allegedly was injured.
- 10 (3) Knowledge on the part of the state that inaction of the state could lead to
11 harm.
- 12 (4) The injured party's justifiable reliance on the state's affirmative undertaking,
13 occurrence of the injury while the injured party was under the direct control
14 of the state, or the state action increases the risk of harm.
- 15 h. A claim resulting from the assessment and collection of taxes.
- 16 i. A claim resulting from snow or ice conditions, water, or debris on a highway or on
17 a public sidewalk that does not abut a state-owned building or parking lot, except
18 when the condition is affirmatively caused by the negligent act of a state
19 employee.
- 20 j. A claim resulting from any injury caused by a wild animal in its natural state.
- 21 k. A claim resulting from the condition of unimproved real property owned or leased
22 by the state.
- 23 l. A claim resulting from the loss of benefits or compensation due under a program
24 of public assistance.
- 25 m. A claim resulting from the reasonable care and treatment, or lack of care and
26 treatment, of a person at a state institution where reasonable use of available
27 appropriations has been made to provide care.
- 28 n. A claim resulting from damage to the property of a patient or inmate of a state
29 institution.
- 30 o. A claim resulting from any injury to a resident or an inmate of a state institution if
31 the injury is caused by another resident or inmate of that institution.

- 1 p. A claim resulting from environmental contamination, except to the extent that
2 federal environmental law permits the claim.
- 3 q. A claim resulting from a natural disaster, an act of God, a military action, or an act
4 or omission taken as part of a disaster relief effort.
- 5 r. A claim for damage to property owned by the state.
- 6 s. A claim for liability assumed under contract, except this exclusion does not apply
7 to liability arising from a state employee's operation of a rental vehicle if the loss
8 is not covered by the state employee's personal insurance or by the vehicle rental
9 company.
- 10 4. An action brought under this chapter must be commenced within the period provided
11 in section 28-01-22.1.
- 12 5. This chapter does not create or allow any claim that does not exist at common law or
13 has not otherwise been created by law as of April 22, 1995.