

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 792\*  
Information Technology Committee Substitute Adopted 5/25/16

Short Title: State IT Contracts/Contractor Liability.

(Public)

Sponsors:

Referred to:

May 2, 2016

1 A BILL TO BE ENTITLED  
2 AN ACT SETTING THE LIMITS OF CONTRACTOR LIABILITY UNDER STATE  
3 INFORMATION TECHNOLOGY PROCUREMENT CONTRACTS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143B-1350 is amended by adding a new subsection to read:

6 "(h1) All contracts subject to the provisions of this Part shall include a limitation on the  
7 contractor's liability to the State for damages. Except as otherwise provided in this subsection, the  
8 limitation of liability shall be for damages arising from any cause whatsoever, regardless of the  
9 form of action. The amount of liability shall be determined based on the nature of the goods or  
10 services covered by the contract; however, there shall be a presumptive limitation of no more than  
11 two times the value of the contract. Limitation of liability pursuant to this subsection shall  
12 specifically include, but not be limited to, the contractor's liability for damages and any other  
13 losses relating to the loss of, unauthorized access to, or unauthorized disclosure of data.

14 The amount of liability for damages and any other losses relating to the loss of, unauthorized  
15 access to, or unauthorized disclosure of data may be raised to no more than five times the value of  
16 the contract if all of the following apply:

- 17 (1) The State CIO completes a risk assessment prior to the bid solicitation or  
18 request for proposal.  
19 (2) The risk assessment determines that an increase in the liability amount is  
20 necessary to protect the State's best interests.  
21 (3) The bid solicitation or request for proposal indicates that increased liability will  
22 be required for the resulting contract.

23 The State CIO shall report annually to the Joint Legislative Commission on Governmental  
24 Operations and the Joint Legislative Oversight Committee on Information Technology no later  
25 than March 1 regarding the contracts containing liability amounts of more than two times the  
26 value of the contract.

27 Prior to entering into any contract subject to the provisions of this Part, the Department or the  
28 separate agency, as applicable, shall reasonably determine that the contractor possesses sufficient  
29 financial resources, either independently or through third-party sources such as insurance, to  
30 satisfy the agreed upon limitation of liability. The limitation of liability required by this subsection  
31 shall not be required to apply to liability of the contractor for intentional or willful misconduct,  
32 damage to tangible personal property, or physical injuries to persons. Nothing in this subsection (i)  
33 limits the contractor's liability directly to third parties or (ii) affects the rights and obligations  
34 related to contribution among joint tortfeasors established by Chapter 1B of the General Statutes  
35 and other applicable law."

36 **SECTION 2.** This act is effective when it becomes law.



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