

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

SESSION LAW 2016-85
SENATE BILL 792*

AN ACT SETTING THE LIMITS OF CONTRACTOR LIABILITY UNDER STATE
INFORMATION TECHNOLOGY PROCUREMENT CONTRACTS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

Prior to entering into any contract subject to the provisions of this Part, the Department or the separate agency, as applicable, shall reasonably determine that the contractor possesses sufficient financial resources, either independently or through third-party sources, such as insurance, to satisfy the agreed upon limitation of liability. The limitation of liability required by this subsection shall not apply to liability of the contractor for intentional or willful misconduct, damage to tangible personal property, physical injuries to persons, or any notification costs resulting from compliance with G.S. 132-1.10(c1). Nothing in this subsection (i) limits the contractor's liability directly to third parties or (ii) affects the rights and obligations related to contribution among joint tortfeasors established by Chapter 1B of the General Statutes and other applicable law."



SECTION 2. This act is effective when it becomes law and applies to contracts entered into, extended via the exercise of options or otherwise, renewed, or amended on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 9:12 a.m. this 30th day of June, 2016