



# SENATE BILL 792: State Information Technology Contracts/Contractor Liability.

2015-2016 General Assembly

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<b>Committee:</b>		<b>Date:</b>	August 17, 2016
<b>Introduced by:</b>		<b>Prepared by:</b>	Susan Sitze Staff Attorney
<b>Analysis of:</b>	S.L. 2016-85		

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**OVERVIEW:** *S.L. 2016-85 requires limits of contractor liability for damages under State information technology procurement contracts. The act sets a presumption of liability of two times the value of the contract, with authorization for the amount to be raised to three times the value of the contract under certain circumstances.*

*This act became effective June 30, 2016, and applies to contracts entered into, extended via the exercise of options or otherwise, renewed, or amended on or after that date.*

**BILL ANALYSIS:** S.L. 2016-85 requires that all information technology procurement contracts subject to the policies and procedures established by the State CIO for information technology procurement include a limitation on the contractor's liability for damages arising from any cause whatsoever, regardless of the form of action. The amount of liability shall be presumed to be no more than two times the value of the contract. The limitation must include 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 related to data breaches may be raised to no more than three times the value of the contract if the State CIO does a risk assessment prior to the bid solicitation or request for proposal (RFP) that determines that an increase in the liability amount is necessary to protect the State's best interests and indicates in the bid solicitation or RFP that increased liability will be required for the resulting contract. The State CIO must report annually to Governmental Operations and IT Oversight on any contracts containing increased liability amounts.

The liability limitation is not required to 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 the act limits liability to third parties or affects rights of contribution among joint tortfeasors.

**EFFECTIVE DATE:** This act became effective June 30, 2016, and applies to contracts entered into, extended via the exercise of options or otherwise, renewed, or amended on or after that date.

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