

THE TWENTY-SIXTH LEGISLATURE OF AMERICAN SAMOA

Second Regular Session

**Begun and held at Fagatogo, Tutuila American Samoa
on Monday, the twelfth day of July
one thousand nine hundred and ninety nine**

AN ACT EXEMPTING THE AMERICAN SAMOA GOVERNMENT FROM LIABILITY RELATING TO CLAIMS AGAINST THE AMERICAN SAMOA GOVERNMENT OR ITS EMPLOYEES BASED ON YEAR 2000 [Y-2K] ERRORS BY AMERICAN SAMOA GOVERNMENT COMPUTER-BASED SYSTEMS AND PROVIDING FOR AN EARLY EFFECTIVE DATE; AMENDING SECTION 43.1202; AND CREATING SECTIONS 43.1230, 43.1231, 43.1232, 43.1233, 43.1234, AND 43.1235 ASCA.

Preamble:

The purpose of this act is to amend the immunity provisions established in Chapter 12 of Title 43 of the American Samoa Code Annotated, the Government Tort Liability Act, to include protection to persons affected by a Y-2K error generated by a government computer system. This act affords protection as to claims arising out of or relating to a Y-2K error produced, calculated, or generated by a government computer system or other computer-based system, regardless of the cause of the Y-2K error. These provisions are intended to be applied retroactively to protect the government from serving as a deep pocket for claims based on Y-2K errors produced, calculated, or generated by computer-based systems.

This act is effective upon passage by the Legislature and approval by the Governor due to the urgent need to immediately provide immunity from suit as relates to Y-2K computer errors.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. 43.1202 is amended to read:

“43.1202 Definitions.

As used in this chapter:

(1) “Computer-based system: includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equipment, machinery, plant, or a device using an embedded or installed microprocessor or chip.

(a) (2) “Employees of the government” includes officers and employees of any government agency, and persons acting in behalf of a government agency in an official capacity, temporarily, whether with or without compensation.

(b) (3) “Government agency or American Samoa Government” includes without limitation the Legislative, Judicial and Executive branches, including their respective the executive departments, offices, agencies, authorities, boards and or commissions of the government, but does do not include any contractor with the government.

(4) “Government computer system” means a computer-based system owned or operated by or on behalf of the American Samoa Government.

(5) “Y-2K compliant” means, that the system accurately processes date and time data, including but not limited to, calculating, comparing, projecting, and sequencing from, into, and between the twentieth and twenty-first centuries and the years 1999 and 2000, and leap year calculations.

(6) “Y-2K error” means the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from, into, or between the twentieth and twenty-first centuries, the years 1999 and 2000 and beyond, and leap year calculations.”

Sec 2. There is created a section 43.1230 which reads:

“43.1230 Liability of government--Exceptions.

(a) The liability provisions of this chapter shall not be applied to allow for any claim arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system not being Y-2K compliant, regardless of the cause for the system not being Y-2K compliant.

(b) Nothing in this chapter shall be deemed to provide immunity or release from liability to any person who:

(1) Deliberately tampers with a government computer system for the purpose of preventing it from being Y-2K compliant; causing the system to produce, calculate, or generate a Y-2K error; provided, however, that the immunity or release from liability shall remain where the Y-2K error arises out of to a test performed to determine whether a government computer system will produce, calculate, or generate a Y-2K error; or

(2) Receives and fails to immediately return a benefit which the person is not legally entitled to arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system's not being Y-2K complaint, which benefit was provided to the person as a result of a Y-2K error produced, calculated, or generated by a government computer system."

Sec 3. There is created a section 43.1231 which reads:

"43.1231 Immunity Against Suits.

No action, including, without limitation, any action for declaratory or injunctive relief, may be brought against the American Samoa Government or a government employee, arising out of or based upon any failure of or error produced, calculated, or generated by a government computer system as a result of the system's not being Y-2K compliant, regardless of the cause for the system's not being Y-2K compliant."

Sec 4. There is created a section 43.1232 which reads:

"43.1232 Preventive and remedial measures.

Nothing in this chapter shall be deemed to prevent the American Samoa Government, an agency, a board, or a government employee, from taking steps to prevent or remedy any failure of or a Y-2K error produced, calculated, or generated by a government computer system as a result of the system's not being Y-2K compliant, once the failure or error has been verified."

Sec 5. There is created a section 43.1233 which reads:

"43.1233 Effect on insurance.

Nothing in this act is intended to affect the indemnity and defense coverage rights and obligations under any contract of insurance.”

Sec. 6 There is created a section 43.1234 which reads:

“43.1234 Severability.

If any provision of this act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.”

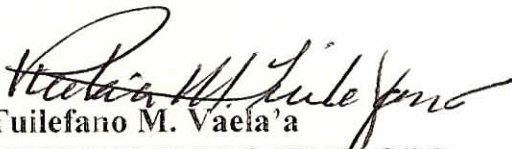
Sec 7. There is created a section 43.1235 which reads:

“43.1235 Preemption.

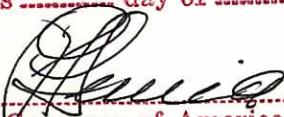
If any portion of this act is found to be preempted by federal law or regulation, the remainder shall remain in full force and effect to the fullest extent consistent with the preemption.”

Sec 8. Effective date.

This act is effective immediately upon passage by the Legislature and approval by the Governor.


Tuilefano M. Vaela'a
PRESIDENT PRO TEMPORE


Aina Saoluaga T. Nua
SPEAKER OF THE HOUSE

Hereby Approved this 11th day of OCTOBER, 19 99

Governor of American Samoa

NOFOA'IGA LUASEFULU-ONO FONO FAITULAFONO O AMERIKA SAMOA

Fono Tele Lona Lua

Nófoia ma usuia i Fagatogo, Tutuila, Amērika Samoa
 Aso Gafua, aso sefulu-lua o Iulai
 tasi le afe iva selau iva sefulu iva

O SE TULAFONO E FA'AGAFUA AI LE MALO O AMERIKA SAMOA MAI FATUAIGA FA'ALE-TULAFONO E FA'ATATAU I TAGI E FA'ASAGA I LE MALO O AMERIKA SAMOA PO'O ŌNA TAGATA FAIGALUEGA E FA'AVAE I MEASESĒ O LE TAUSAGA 2000 (T-2A) O FELAVASA'IGA O KAMUPIUTA 'AUTU A LE MALO O AMERIKA SAMOA MA SAUNIA AI MO SE ASO TAUALOA VAVE; SUIA AI LE MAGA 43.1202; MA FA'AVAEINA AI MAGA 43.1230, 43.1231, 43.1232, 43.1233, 43.1234, MA LE 43.235.TTAS.

Fa'atomuaga:

O le fa'amoemoega o lenei tulafono e sui ai aiaiga o le puipuiga ua uma ona aiaia i le Mata'upu 12 o le Ulutala 43 o le Tusi Tulafono Toetoutueina o Amerika Samoa, Tulafono o Fatuaiga-fa'ale-tulafono o Measesē a le Malo, ina ia aofia ai ma le puipuiga o tagata e afaina i se measesē o le T-2A e tula'i mai i se felavasa'iga o kamupiuta a le malo. O lenei tulafono e mafai ai ona puipuia mai talosaga e tula'i mai i pe fa'asino i se measesē o le T-2A ua faia, fuafuaina, tula'i mai i se felavasa'iga i kamupiuta a le malo po'o isi felavasa'iga o kamupiuta fa'avacina, e lē afaina ai le mafua'aga o le measesē o le T-2A. O ia aiaiga ua fuafuaina ina ia fa'aaogaina e taualoa ai taimi ua tuana'i e puipu'i ai le malo mai le avea ma 'ato loloto mo talosaga e fa'avae i measesē o le T-2A ua faia, fuafuaina, pe tula'i mai i felavasa'iga o kamupiuta 'autu.

O lenei tulafono o le a taualoa vave pe a pasia e le Fono Faitulafono ma fa'amaonia e le Kovana ona o se mana'oga fa'anatinati e saunia ai se puipuiga mai tagi e fa'asino i measesē o kamupiuta o le T-2A.

IA FA'ATULAFONOINA E LE FONO FAITULAFONO O AMERIKA SAMOA:

Maga 1. 43.1202 ua suia e faitauina:

“43.1202 Fa’auigaga

E pei ona fa’aaogaina i lenei mata’upu:

(1) “Felavasa’iga o kamupiuta ‘autu” e aofia ai so’o se kamupiuta po’o isi felavasa’iga tau metotia fa’asaianisi aoga o fa’amatalaga, ma so’o se masini eletonika e pulea, fa’agaoioi, va’ava’aia, pe fesoasoani i le galueaina po’o le fa’agaoioia o meafaigaluega, masini falegaosi, po’o se masini e fa’aaogaina o se vaega tāua ua tu’u i ai mo le fa’atasi o porokalama kamupiuta po’o se pusa atonika.

(a) (2) “Tagata faigaluega o le malo” e aofia ai ali’i/tama’ita’i ma tagata faigaluega o so’o se ofisa o le malo, ma tagata ua galulue e fai ma sui i se ofisa o le malo, i se tofi fa’alemalo, mo se taimi, pe totogi pe lē totogia fo’i.

(e) (3) “Ofisa Vaega o le malo po’o le Malo o Amerika Samoa” e aofia ai e lē fa’atapula’aina i le lālā Faitulafono, lālā Fa’amasinoga ma le lālā Fa’amalosi Tulafono, e aofia ai ma o latou matagaluega o le fa’amalosi tulafono fa’apitoa, ofisa, vaega, pulega, komiti ma po’o komisi o le malo, ae lē aofia ai so’o se konekarate i le malo.

(4) “Felavasa’iga o kamupiuta a le Malo” o lona uiga o felavasa’iga o kamupiuta autu e ona pe fa’agaoioia e pei e fai ma sui o le Malo o Amerika Samoa.

(5) “Mulimulita’i i le T-2A” o lona uiga, e fa’apea o lena felavasa’iga o le a na fa’amaumauina sa’o aso ma fa’amaumauga o taimi, e aofia ai ae lē fa’atapula’aina i, le fuafuaina, fa’atusatusaina, fa’atulagaina, ma fa’avasegaina mai, i ai, ma i le va o le lona luasefulu ma le luasefulu-tasi seneturi ma tausaga o le 1999 ma 2000 ma ona tua atu, ma fuafuaga o le tausaga fa’aopopo.

(6) “Measesē o le T-2A” o lona uiga o le masei o se felavasa’iga o kamupiuta fa’avaeina i le teuina lelei, fa’aalia, tu’uina atu, maua, fa’atulaga, fuafua, fa’atusatusa, pe fa’avasega aso ma fa’amaumauga o taimi mai, i ai, po’o i le va o le lona luasefulu ma le luasefulu-tasi seneturi, o le tausaga 1999 ma le 2000 senetuli ma tua atu, ma fuafuaga o le tausaga fa’aopopo.”

Maga 2. Ua fa’avaeina se maga 43.1230 e faitauina:

“43.1230 Fatuaiga-fa’ale-tulafono a le malo--Fa’agafuaga.

(a) O aiaiga o fatuaiga fa'ale-tulafono o lenei mata'upu e fa'atatau i so'o se talosaga e tula'i mai i pe fa'avae i so'o se fa'aletonu o po'o se measesē e faia, fuafuaina pe tula'i mai i se felavasa'iga o kamupiuta a le malo o se mafua'aga i le lē mulimulita'i i le T-2A

(e) E leai se mea i lenei mata'upu o le a fa'apea e saunia ai se puipuiga pe fa'asa'oloto mai ai i fatuaiga fa'ale tulafono i so'o se tagata na te:

(1) Faia se feutaga'iga lē tonu ma le iloa i felavasa'iga a le malo mo le fa'amoemoe e taofia ai mai le usita'i atu i le T-2A, e mafua ai e le felavasa'iga ona fai, fuafua, pe aumaia se measesē i le T-2A, pe afai, ae peita'i o le puipuiga po'o le fa'asa'olotoina mai fatuaiga fa'ale-tulafono o le a tumau ma e lē tu'u'esea mai le tulaga na tula'i mai ai i le measesē o le T-2A i se su'ega na fa'ataunu'uina e iloa ai pe mata o felavasa'iga o kamupiuta a le malo e faia, fuafua pe fofoa mai ai se measesē o le T-2A. pe

(2) E maua ma le mafai ona fa'afo'i atu vave se penefiti e lē ōna e tusa ma le tulafono e lenei tagata na mafua mai pe fa'avae i so'o se masei o le po'o se measesē ua faia, fuafuaina, pe fofoa mai se felavasa'iga o kamupiuta a le malo ona o le mafua'aga o le lē mulimuta'i o felavasa'iga i faiga tausisia o le T-2A, ua alai ona maua lenei penefiti e lenei tagata ona o se measesē o le T-2A na faia, fuafuaina, pe tula'i mai i se felavasa'iga o kamupiuta a le malo."

Māga 3. Ua fa'vaeina se maga 43.1231 e faitauina:

"43.1231 Puipuiga i tagi.

E leai se tagi, e aofia ai, ae lē fa'atapula'aina, i so'o se tagi mo le fa'apupulaina o 'aiā po'o mapusaga mai mea e fa'aleagaina e mafai ona tauia, e mafai ona aumaia e fa'asaga i le Malo o Amerika Samoa, se ofisa, se komiti, po'o se tagata faigaluega a le malo, e tula'i mai pe fa'avae i so'o se fa'aletonu po'o se measesē ua faia, fuafuaina, pe tula'i mai e se felavasa'iga o kamupiuta a le malo e mafua mai i le lē mulimulita'i o se felavasa'iga i tulaga tausisia o le T-2A, e lē afaina ai le mafua'aga o le mulimulita'i o felavasa'iga i faiga tausisia o le T-2A."

Maga 4. Ua fa'avaeina se maga 43.1232 e faitauina:

"43.1232 Fuafuaga taufa'aofi tau le puipuiga.

E leai se mea i lenei mata'upu o le a fa'atalitonuina ai e taofia mai ai le Malo o Amerika Samoa, po'o se tagata faigaluega o le malo, mai le faia o la'asaga e puipui ai

so'o se fa'aletonu o po'o se measese o le T-2A ua faia, fuafuaina, pe tula'i mai i se felavasa'iga o kamupiuta a le malo e mafua mai le le usita'ia o faiga tausisia o le felavasa'iga o le T-2A, pe afai ua fa'amaonia se fa'aletonu po'o se measese."

Maga 5. Ua fa'avacina se maga 43.1233 e faitauina:

"43.1233 A'afiaga i inisiua.

E leai se mea i lenei tulafono ua fuafuaina e afaina ai le tologia po'o le puipuiga o 'aiā e puipui malu ai ma fatuaiga i lalo o so'o se feagaiga o le inisiua."

Maga 6. Ua fa'avacina se maga 43.1234 e faitauina:

"43.1234 Tusa ma le fa'alēaogāina.

Afai e i ai so'o se aiaiga o lenei tulafono, po'o lona fa'aaogaina i so'o se tagata po'o tulaga e lē taualoa ai, o le lē taualoaina o le a lē afaina ai isi aiaiga po'o fa'atatauga o le tulafono e mafai ona taualoa e aunoa ma aiaiga e lē taualoa po'o fa'aaogaina, ma o lenei i'uga o aiaiga o lenei tulafono e māvaevae."


Maga 7. Ua fa'avacina se maga 43.1235 e faitauina:

"43.1235 Suitulaga

Afai e i si so'o se vaega o lenei tulafono ua suitulaga ai se tulafono feterale po'o se poloa'iga, o le vaega o totoe o le a tumau lona malosi ma le a'afiaga i lona tulaga atoatoa e o'gatasi ma le suiga".

Maga 8. Aso taualoa.

O lenei tulafono o le a taualoa vave pe a pasia e le Fono Faitulafono ma fa'amaonia e le Kovana.


Tuilefano M. Vaela'a
SUI PERESETENE, MAOTA MAUALUGA


Aina Saoluaga T. Nua
FOFOGA FETALAI, MAOTA O SUI

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Hereby Approved this 1st day of OCTOBER, 1999

Governor of American Samoa