

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1005

Judiciary I Committee Substitute Adopted 4/28/99

House Committee Substitute Favorable 6/16/99

Short Title: Year 2000 Liability Limitations.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL
LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR
2000 PROBLEMS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new
Article to read:

"ARTICLE 35.

"YEAR 2000 LIABILITY AND DAMAGES.

"§ 66-280. Purpose.

The General Assembly finds that maintaining the health and stability of the various
business enterprises located in the State is in the public interest in order to ensure the
uninterrupted delivery of goods and services to the State's citizenry. The General
Assembly further finds that the Year 2000 problem is a one-time occurrence for which no
one person is accountable and, therefore, the business enterprises of the State should not
have their ability to continue to deliver goods and services impaired by having to contest
lawsuits arising from Year 2000 problems over which such business enterprises and
governmental units have no control. This Article is intended to place prudent limitations

1 on the potential liability of the State's business enterprises, while preserving the
2 appropriate right of recovery by persons suffering losses. This Article does not limit
3 enforcement of laws, regulations, or permits by State or local government bodies or
4 agencies.

5 **"§ 66-281. Definitions.**

6 As used in this Article:

7 (1) 'Contractual control' means the right to direct the manner in which a
8 party performs those contractual obligations related to the claim for
9 which damages have been made.

10 (2) 'Person' means any individual, corporation, partnership, association,
11 company, business trust, joint venture, or other legal entity.

12 (3) 'Performed with due diligence' means acted with reasonable care in its
13 operations to prevent the occurrence of a Year 2000 problem.

14 (4) 'Regulated entity' means any insured financial institution or public
15 utility.

16 (5) 'Third party' means, with respect to a person against whom a claim for
17 damages is made based upon a Year 2000 problem, any of the
18 following:

19 a. A person having no affiliate relationship with and not under the
20 contractual control of the person against whom a claim for
21 damages is made based upon a Year 2000 problem.

22 b. A local, State, or federal governmental or quasi-governmental
23 agency or entity.

24 c. A regulated entity.

25 (6) 'Year 2000 problem' means any computing, physical, enterprise, or
26 distribution system complication that has occurred or may occur as a
27 result of the change of the year from 1999 to 2000 in any person's
28 technology system, including computer hardware, programs, software,
29 or systems; embedded chip calculations or embedded systems;
30 firmware; microprocessors; or management systems, business
31 processes, or computing applications that govern, utilize, drive, or
32 depend on the Year 2000 processing capability of the person's
33 technology systems. 'Year 2000 problem' includes the common
34 computer programming practice of using a two-digit field to represent a
35 year, resulting in erroneous date calculations; an ambiguous
36 interpretation of the term or field '00'; the failure to recognize 2000 as a
37 leap year; algorithms that use '99' or '00' to activate another function; or
38 the failure of any other applications, software, or hardware due to their
39 date-sensitive nature.

40 (7) 'Year 2000 processing' means the processing, calculating, comparing,
41 sequencing, displaying, storing, transmitting, or receiving of date or
42 date-sensitive data from, into, or between the twentieth and twenty-first
43 centuries, during the years 1999 and 2000, and leap year calculations.

1 **"§ 66-282. Liability and damages limited.**

2 (a) Subject to subsection (b) of this section, the following apply in any civil action
3 in which the claim for damages is based upon a Year 2000 problem against a person who
4 has performed with due diligence:

5 (1) No person shall be liable to any person who is (i) not in privity of
6 contract with such person, (ii) not a person to whom an express
7 warranty has been extended by such person, or (iii) in the case of a trust,
8 not a beneficiary of a trust administered by such person.

9 (2) No person shall be liable for damages caused by a delay or interruption
10 in performance, or in the delivery of goods or services, resulting from or
11 in connection with (i) a Year 2000 problem to the extent such Year 2000
12 problem was caused by a third party or (ii) a third party's Year 2000
13 problem.

14 (3) No employee, officer, or director shall be liable to any person in his or
15 her capacity as such.

16 (4) No person shall be liable for consequential or punitive damages.

17 (5) Total damages shall not exceed actual damages that are the direct result
18 of a Year 2000 problem.

19 (b) This section does not apply to an express warranty against damages resulting
20 from a Year 2000 problem and does not affect the right of recovery for damages in
21 connection with wrongful death or injuries to person or tangible property.

22 (c) In determining whether a person performed with due diligence under
23 subsection (a) of this section, it is prima facie evidence of due diligence for a regulated
24 entity to comply with the relevant directives of its State or federal regulator.

25 **"§ 66-283. Prelitigation mediation.**

26 (a) Mediation. – Prior to bringing a civil action claiming damages allegedly
27 resulting from a Year 2000 problem, the person with the claim shall initiate mediation
28 pursuant to this section. Prelitigation mediation shall be initiated by filing a request for
29 mediation with the clerk of superior court in a county in which the action may be
30 brought. The Administrative Office of the Courts shall prescribe a request for mediation
31 form. The party filing the request for mediation also shall mail a copy of the request by
32 certified mail, return receipt requested, to each party to the action. The clerk shall provide
33 each party with a list of mediators certified by the Dispute Resolution Commission. If the
34 parties agree in writing to the selection of a mediator from that list, the clerk shall appoint
35 that mediator selected by the parties. If the parties do not agree on the selection of a
36 mediator, the party filing the request for mediation shall bring the matter to the attention
37 of the clerk, and a mediator shall be appointed by the senior resident superior court judge.
38 The clerk shall notify the mediator and the parties of the appointment of the mediator.

39 (b) Mediation Procedure. – The Supreme Court may adopt rules and standards to
40 implement this section. Prior to the adoption of rules by the Supreme Court, rules and
41 standards adopted pursuant to G.S. 7A-38.3 shall be applicable to this section to the
42 extent such rules do not conflict with the provisions of this section.

1 (c) Waiver of Mediation. – The parties to the dispute may waive the mediation
2 required by this section by informing the mediator of their waiver in writing. No costs
3 shall be assessed to any party if all parties waive mediation prior to the occurrence of an
4 initial mediation meeting.

5 (d) Certification That Mediation Concluded. – Immediately upon a waiver of
6 mediation as provided in subsection (c) of this section or upon the conclusion of
7 mediation, the mediator shall prepare a certification stating the date on which the
8 mediation was concluded and the general results of the mediation, including, as
9 applicable, that the parties waived the mediation, that an agreement was reached, that
10 mediation was attempted but an agreement was not reached, or that one or more parties,
11 to be specified in the certification, failed or refused without good cause to attend one or
12 more mediation meetings or otherwise participate in the mediation. The mediator shall
13 file the original of the certification with the clerk and provide a copy to each party. Each
14 party to the mediation has satisfied the requirements of this section upon the filing of the
15 certification, except any party specified in the certification as having failed or refused to
16 attend one or more mediation meetings or otherwise participate.

17 (e) Dismissal of Civil Action. – In any civil action asserting a claim for damages
18 allegedly resulting from a Year 2000 problem, the court shall, upon the motion of any
19 party prior to trial, dismiss the action without prejudice for failure to comply with this
20 section if the moving party establishes the alleged failure to comply, unless:

21 (1) The action has been certified as a class action;

22 (2) The nonmoving party establishes that the moving party was served with
23 a copy of the request for mediation and thereafter declined to participate
24 in a mediated settlement conference;

25 (3) The nonmoving party has satisfied the requirements of this section and
26 such is indicated in a mediator's certification issued under subsection (d)
27 of this section;

28 (4) The court finds that a mediator improperly failed to issue a certification
29 indicating that the nonmoving party satisfied the requirements of this
30 section; or

31 (5) The nonmoving party demonstrates, to the satisfaction of the court,
32 good cause for the failure to comply with this section.

33 (f) Time Periods Tolloed. – Time periods relating to the filing of a claim or the
34 taking of other action with respect to a claim for damages resulting from a Year 2000
35 problem, including any applicable statutes of limitations, shall be tolled upon the filing of
36 a request for mediation under this section, until 30 days after the date on which the
37 mediation is concluded as set forth in the mediator's certification, or if the mediator fails
38 to set forth such date, until 30 days after the filing of the certification under subsection
39 (d) of this section."

40 Section 2. This act is effective when it becomes law and applies to claims
41 arising on or after that date. This act expires on December 31, 2004.