

GENERAL ASSEMBLY OF NORTH CAROLINA

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Short Title: Year 2000 Liability Limitations.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL
3 LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR
4 2000 PROBLEMS.

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 35.**
9 **"YEAR 2000 LIABILITY AND DAMAGES.**

10 **"§ 66-280. Purpose.**

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

1 governmental units have no control. This Article is intended to place prudent limitations
2 on the potential liability of the State's business enterprises, while preserving the
3 appropriate right of recovery by persons suffering losses. This Article does not limit
4 enforcement of laws, regulations, or permits by State or local government bodies or
5 agencies.

6 **"§ 66-281. Definitions.**

7 As used in this Article:

- 8 (1) 'Contractual control' means the right to direct the manner in which a
9 party performs those contractual obligations related to the claim for
10 damages.
- 11 (2) 'Person' means any individual, corporation, partnership, association,
12 company, business trust, joint venture, or other legal entity.
- 13 (3) 'Performed with due diligence' means acted with reasonable care in its
14 operations to prevent the occurrence of a Year 2000 problem.
- 15 (4) 'Regulated entity' means any insured financial institution or public
16 utility.
- 17 (5) 'Third party' means, with respect to a person against whom a claim for
18 damages is made based upon a Year 2000 problem, any of the
19 following:
- 20 a. A person having no affiliate relationship with and not under the
21 contractual control of the person against whom a claim for
22 damages is made based upon a Year 2000 problem.
- 23 b. A local, State, or federal governmental or quasi-governmental
24 agency or entity.
- 25 c. A regulated entity.
- 26 (6) 'Year 2000 problem' means any computing, physical, enterprise, or
27 distribution system complication that has occurred or may occur as a
28 result of the change of the year from 1999 to 2000 in any person's
29 technology system, including computer hardware, programs, software,
30 or systems; embedded chip calculations or embedded systems;
31 firmware; microprocessors; or management systems, business
32 processes, or computing applications that govern, utilize, drive, or
33 depend on the Year 2000 processing capability of the person's
34 technology systems. 'Year 2000 problem' includes the common
35 computer programming practice of using a two-digit field to represent a
36 year, resulting in erroneous date calculations; an ambiguous
37 interpretation of the term or field '00'; the failure to recognize 2000 as a
38 leap year; algorithms that use '99' or '00' to activate another function; or
39 the failure of any other applications, software, or hardware due to their
40 date-sensitive nature.
- 41 (7) 'Year 2000 processing' means the processing, calculating, comparing,
42 sequencing, displaying, storing, transmitting, or receiving of date or

1 date-sensitive data from, into, or between the twentieth and twenty-first
2 centuries, during the years 1999 and 2000, and leap year calculations.

3 **"§ 66-282. Liability and damages limited.**

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

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

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

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

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

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

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

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

27 **"§ 66-283. Prelitigation mediation.**

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

41 (b) Mediation Procedure. – Except as otherwise expressly provided in this section,
42 mediation under this section shall be conducted in accordance with the provisions for
43 mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and

1 standards adopted pursuant to those sections. The Supreme Court may adopt additional
2 rules and standards to implement this section, including an exemption from the
3 provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this
4 section. Prior to the adoption of rules by the Supreme Court, rules and standards adopted
5 pursuant to G.S. 7A-38.3 shall be applicable to this section to the extent such rules do not
6 conflict with the provisions of this section.

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

11 (c1) If a party to the dispute is entitled to an affirmative defense pursuant to G.S. 1-
12 539.26, that party may refuse to participate in the mediation. If the party agrees to
13 participate in the mediation as provided in this section, that party is not entitled to an
14 affirmative defense pursuant to G.S. 1-539.26 upon the filing of the civil action. If the
15 party refuses to participate in the mediation, the mediator shall immediately prepare a
16 certification as provided in subsection (d) of this section stating that the party refused
17 with good cause to participate in the mediation and has satisfied the requirements of this
18 section.

19 (d) Certification That Mediation Concluded. – Immediately upon a waiver of
20 mediation as provided in subsection (c) of this section or upon the conclusion of
21 mediation, the mediator shall prepare a certification stating the date on which the
22 mediation was concluded and the general results of the mediation, including, as
23 applicable, that the parties waived the mediation, that an agreement was reached, that
24 mediation was attempted but an agreement was not reached, or that one or more parties,
25 to be specified in the certification, failed or refused without good cause to attend one or
26 more mediation meetings or otherwise participate in the mediation. The mediator shall
27 file the original of the certification with the clerk and provide a copy to each party. Each
28 party to the mediation has satisfied the requirements of this section upon the filing of the
29 certification, except any party specified in the certification as having failed or refused to
30 attend one or more mediation meetings or otherwise participate.

31 (e) Dismissal of Civil Action. – In any civil action asserting a claim for damages
32 allegedly resulting from a Year 2000 problem, the court shall dismiss the action without
33 prejudice for failure to comply with this section if the moving party asserts in his or her
34 pleading the alleged failure to comply and establishes the alleged failure to comply,
35 unless:

- 36 (1) The action has been certified as a class action;
- 37 (2) The nonmoving party establishes that the moving party was served with
38 a copy of the request for mediation and thereafter declined to participate
39 in a mediated settlement conference;
- 40 (3) The nonmoving party has satisfied the requirements of this section and
41 such is indicated in a mediator's certification issued under subsection (d)
42 of this section;

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

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

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

13 Section 2. G.S. 66-283(c1), as enacted in Section 1 of this act, is effective only
14 if Senate Bill 1074 becomes law.

15 Section 3. If Senate Bill 192, 1999 Regular Session, becomes law, then Article
16 35 of Chapter 66 of the General Statutes, as enacted by this act, is recodified as Article 36
17 of Chapter 66 of the General Statutes.

18 Section 4. This act is effective when it becomes law and applies to claims
19 arising on or after that date. This act expires on December 31, 2004.