

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1074  
Judiciary II Committee Substitute Adopted 4/27/99

Short Title: Year 2000 Consumer Protection Act.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING  
3 CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE  
4 BASED ON A YEAR 2000 PROBLEM.

5 The General Assembly of North Carolina enacts:

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

8 **"ARTICLE 43E.**

9 **"AFFIRMATIVE DEFENSE BASED ON YEAR 2000 FAILURE.**

10 **"§ 1-539.25. Definitions.**

11 Unless the context clearly requires otherwise, the definitions in this section apply  
12 throughout this Article:

13 (1) 'Electronic computing device' means any computer hardware or  
14 software, computer chip, embedded chip, process control equipment, or  
15 other information system that:

- 16 a. Is used to capture, store, manipulate, or process data; or
- 17 b. Controls, monitors, or assists in the operation of physical  
18 apparatus that is not primarily used as a computer but that relies  
19 on automation or digital technology to function, including, but

1 not limited to, vehicles, vessels, buildings, structures, facilities,  
2 elevators, medical equipment, traffic signals, and factory  
3 machinery.

4 (2) 'Person' means any natural person, partnership, corporation, body  
5 politic, and any unincorporated association, organization, or society  
6 which may sue or be sued under a common name.

7 (3) 'Year 2000 problem' means disruptions in electronic communications or  
8 the functioning of electronically controlled equipment resulting or  
9 reasonably anticipated to result from erroneous data that is or may be  
10 supplied by electronic devices in 1999 or on or after January 1, 2000.

11 **"§ 1-539.26. Right to affirmative defense based on year 2000 problem.**

12 (a) A person has an affirmative defense to any claim or action brought against the  
13 person if the person establishes that the person's default, failure to pay, breach, omission,  
14 or other violation that is the basis of the claim against the person was caused by a year  
15 2000 problem associated with an electronic computing device that is not owned,  
16 controlled, or operated by the person, and, if it were not for the year 2000 problem, the  
17 person would have been able to satisfy the obligations that are the basis of the claim.

18 (b) If a person establishes an affirmative defense as set forth in subsection (a) of  
19 this section, the court shall dismiss the claim without prejudice and the person or entity  
20 making the claim against the person shall not reassert the claim as to which the  
21 affirmative defense was asserted for a period of 60 days from the date on which the  
22 affirmative defense is granted by the court. Any statute of limitations applicable to the  
23 claim is tolled for 90 days upon the granting of the affirmative defense under this section.

24 (c) This section does not affect those transactions upon which a default has  
25 occurred before any disruption of financial or data transfer operations attributable to the  
26 year 2000 date change, and does not apply to claims for personal injury or wrongful  
27 death.

28 (d) The granting of the affirmative defense under this section does not impair,  
29 extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the  
30 basis of the claim against which the affirmative defense was asserted; except that the  
31 inability of a party to bring the claim based upon the obligation must be delayed as set  
32 forth in subsection (b) of this section.

33 (e) A credit reporting agency operating in this State shall not report any negative  
34 credit information resulting from the failure of an electronic computing device to process  
35 financial information and other information or the inability of the consumer to transact  
36 financial business and make payments due to the failure of an electronic computing  
37 device to compute, recognize, or timely process the year 2000 date change."

38 Section 2. This act is effective when it becomes law and shall apply to actions  
39 accruing on or after that date. The act expires October 1, 2000.