

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL NO. 554

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in lines 4, and 12 and 13, in each instance, strike “for Maryland government, business, commerce, and consumers”; in lines 5 and 14, in each instance, strike “products” and substitute “, products, or services”; in line 6, after “data” insert “problems”; strike beginning with the first “certain” in line 7 down through “documents” in line 10 and substitute “a certain affirmative defense”; in line 11, after “Act;” insert “providing for the termination of this Act;”; in line 14, after “data” insert “problems under certain circumstances”; and in line 22, strike “21-107” and substitute “21-104”.

AMENDMENT NO. 2

On pages 2 through 6, strike in their entirety the lines beginning with line 25 on page 2 through line 32 on page 6, inclusive, and substitute:

“(C) “COMPLIANCE PLAN” MEANS A WRITTEN PLAN TO INVENTORY, ASSESS, OBTAIN INFORMATION FROM CRITICAL SUPPLIERS, TEST, SCHEDULE REPAIRS, REMEDIATE, AND PROVIDE A CONTINGENCY PLAN OF ACTION RELATING TO Y2K DATE DATA PROBLEMS IN INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS.

“(D) “CRITICAL INFORMATION TECHNOLOGY SYSTEM OR PRODUCT” MEANS AN INFORMATION TECHNOLOGY SYSTEM OR PRODUCT THE FAILURE OF WHICH MAY RESULT IN AN IMMINENT AND SUBSTANTIAL THREAT TO PUBLIC HEALTH OR SAFETY.

“(E) “INFORMATION TECHNOLOGY SYSTEM OR PRODUCT” INCLUDES ANY SOFTWARE, FIRMWARE, MICROCODE, HARDWARE, EMBEDDED CHIPS, OR OTHER SYSTEM OR PRODUCT, OR ANY COMBINATION OF THOSE ITEMS, THAT CREATES, READS, WRITES, CALCULATES, COMPARES, SEQUENCES, OR OTHERWISE PROCESSES

(Over)

DATE DATA.

(F) "SOLUTION PROVIDER" MEANS ANY PERSON THAT ACCEPTS COMPENSATION OR OTHER VALUABLE CONSIDERATION FROM A PERSON TO:

(1) ASSESS WHETHER ANY OF THE PERSON'S PRODUCTS OR SERVICES ARE YEAR 2000-READY; OR

(2) ENSURE THAT ANY OF THE PERSON'S PRODUCTS OR SERVICES ARE YEAR 2000-READY.

(G) "YEAR 2000-READY" MEANS ANY PRODUCT OR SERVICE THAT:

(1) RELIES UPON AN INFORMATION TECHNOLOGY SYSTEM OR PRODUCT THAT INCLUDES DATE DATA;

(2) OPERATES IN A MANNER CONSISTENT WITH THE DESIGN REQUIREMENTS OR OTHER SPECIFICATION FOR THE PRODUCT OR SERVICE; AND

(3) DOES NOT CAUSE A Y2K DATE DATA PROBLEM.

(H) "Y2K DATE DATA PROBLEM" MEANS THE FAILURE, MALFUNCTION, OR INADEQUACY OF AN INFORMATION TECHNOLOGY SYSTEM, PRODUCT, OR SERVICE TO RECOGNIZE, PROCESS, DISTINGUISH, INTERPRET, OR ACCEPT CORRECTLY DATE DATA RELATING TO THE YEAR 2000, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING SPECIFIC DATES:

(1) AUGUST 22, 1999;

(2) SEPTEMBER 9, 1999;

(3) DECEMBER 31, 1999;

(4) JANUARY 1, 2000;

- (5) JANUARY 3, 2000;
- (6) JANUARY 10, 2000;
- (7) FEBRUARY 29, 2000;
- (8) OCTOBER 10, 2000; AND
- (9) JANUARY 1, 2001.

21-102.

(A) THE EXCLUSIVE REMEDIES IN THIS STATE FOR RECOVERING FROM A PERSON ANY DAMAGES CAUSED BY THE FAILURE OF A PRODUCT OR SERVICE PROVIDED BY THE PERSON TO BE YEAR 2000-READY SHALL BE AS PROVIDED:

(1) UNDER ANY PROVISION OF A CONTRACT BETWEEN THE PERSON AND THE PLAINTIFF THAT PROVIDES SPECIFIC REMEDIES FOR THE FAILURE OF THE PRODUCT OR SERVICE TO BE YEAR 2000-READY; OR

(2) IN CASES NOT COVERED UNDER PARAGRAPH (1) OF THIS SUBSECTION, UNDER THIS SUBTITLE.

(B) A PERSON WHOSE PRODUCT OR SERVICE IS NOT YEAR 2000-READY SHALL BE LIABLE UNDER THIS TITLE ONLY WHERE THE FAILURE OF THE PRODUCT OR SERVICE TO BE YEAR 2000-READY IS THE PROXIMATE CAUSE OF THE DAMAGES.

(C) THIS TITLE DOES NOT APPLY TO:

(1) A PRODUCTS LIABILITY ACTION AGAINST A MANUFACTURER FOR WRONGFUL DEATH OR PERSONAL INJURY; OR

(Over)

(2) A CLAIM FOR WORKERS' COMPENSATION BENEFITS.

21-103.

(A) IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY ACTION BROUGHT BY A PLAINTIFF AGAINST ANY PERSON WHOSE PRODUCT OR SERVICE IS NOT YEAR 2000-READY THAT THE PERSON DETERMINED AND IMPLEMENTED IN GOOD FAITH ACTIONS NECESSARY FOR THE PERSON TO BECOME YEAR 2000-READY IN A MANNER THAT WOULD BE EXERCISED BY A REASONABLY PRUDENT PERSON UNDER THE SAME OR SIMILAR CIRCUMSTANCES.

(B) IN DETERMINING WHETHER A PERSON MEETS THE STANDARD OF CARE DESCRIBED UNDER SUBSECTION (A) OF THIS SECTION, THE TRIER OF FACT SHALL CONSIDER, AMONG OTHER ACTIONS, WHETHER THE PERSON COMPLETED THE FOLLOWING ITEMS IN ITS Y2K COMPLIANCE PLAN:

(1) INVENTORIED ITS INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS TO DETERMINE WHETHER THEY ARE YEAR 2000-READY;

(2) IDENTIFIED CRITICAL INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS AND OBTAINED INFORMATION FROM ITS CRITICAL SUPPLIERS REGARDING THEIR Y2K COMPLIANCE PLANS;

(3) ASSESSED POTENTIAL Y2K DATE DATA PROBLEMS AND TESTED, IF PRACTICABLE, ITS CRITICAL INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS;

(4) INITIATED REASONABLE EFFORTS TO REMEDIATE Y2K DATE DATA PROBLEMS IN ITS INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS;

(5) REASONABLY REMEDIATED Y2K DATE DATA PROBLEMS IN ITS CRITICAL INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS; AND

(6) DEVELOPED A CONTINGENCY PLAN THAT SPECIFIED ACTIONS

THAT SHALL BE TAKEN IF REMEDIATION FAILS.

(C) THE FAILURE OF A SOLUTION PROVIDER TO PROVIDE AN EXPRESS WARRANTY ON WHICH A PERSON MAY RELY MAY NOT BE CONSTRUED AS A FAILURE OF THE PERSON TO COMPLY WITH THE STANDARD SET OUT UNDER SUBSECTION (A) OF THIS SECTION IF THE SOLUTION PROVIDER REPRESENTS TO THE PERSON THAT:

(1) THE SOLUTION PROVIDER OR ANY OF ITS INFORMATION TECHNOLOGY SYSTEMS OR PRODUCTS ARE YEAR 2000-READY; OR

(2) THE SOLUTION PROVIDER WILL MAKE THE PERSON'S PRODUCTS OR SERVICES YEAR 2000-READY.

21-104.

THE EXCHANGE OF INFORMATION AMONG GOVERNMENTAL ENTITIES AND PERSONS CONCERNING MEASURES THAT HAVE BEEN TAKEN OR ARE TO BE TAKEN IN ORDER FOR THE GOVERNMENTAL ENTITIES' OR PERSONS' PRODUCTS OR SERVICES TO BECOME YEAR 2000-READY DOES NOT CONSTITUTE AN ACTIVITY OR CONDUCT IN THE RESTRAINT OF TRADE OR COMMERCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively to apply to causes of action arising out of a Y2K date data problem, as defined in § 21-101(h) of the Commercial Law Article as enacted by this Act, occurring on or before January 2, 2001 and may not be applied or interpreted to have any effect on or application to any case filed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That nothing in this Act shall be construed to:

(1) Recognize, endorse, or suggest the existence or validity of any purported cause of action;

(Over)

- (2) Create a cause of action where none otherwise existed;
- (3) Limit the ability of contracting parties to enter into agreements as they deem appropriate on the issue of liability and damages;
- (4) Affect the validity of existing contracts created on or before the effective date of this Act regarding issues of liability and damages; or
- (5) Be indicative of any type of industry standard relating to year 2000 readiness of information technology products or goods and services that rely on information technology products.

SECTION 4. AND BE IT FURTHER ENACTED, That nothing in this Act may be construed to preclude or limit the effect of any legislation enacted by the United States relating to year 2000 readiness.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1999. It shall remain effective until January 2, 2004, and at the end of January 2, 2004, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.”.