

HOUSE BILL 8

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1999 Regular Session
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(PRE-FILED)

By: **Delegates Taylor, Vallario, Arnick, Busch, Dewberry, Doory, Guns,
Harrison, Hixson, Howard, Hurson, Kopp, Menes, Owings, Rawlings,
Rosenberg, and Wood**

Requested: November 20, 1998

Introduced and read first time: January 13, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Year 2000 Commerce Protection Act**

3 FOR the purpose of creating the Year 2000 Commerce Protection Act to establish
4 certain remedies for Maryland government, business, commerce, and consumers
5 for damages caused by the failure of information technology products because of
6 certain date data; providing for certain damages under certain circumstances;
7 providing for certain standards of liability and for certain defenses; limiting
8 certain actions under certain circumstances; clarifying certain responsibilities of
9 officers and directors of corporations and certain other persons regarding due
10 diligence; clarifying the discoverability of certain information and documents;
11 defining certain terms; providing for the construction of this Act; declaring the
12 intent of the General Assembly; and generally relating to remedies for Maryland
13 government, business, commerce, and consumers for damages caused by the
14 failure of information technology products because of date data.

15 BY repealing and reenacting, with amendments,
16 Article - Commercial Law
17 Section 11-203(12) and (13)
18 Annotated Code of Maryland
19 (1990 Replacement Volume and 1998 Supplement)

20 BY adding to
21 Article - Commercial Law
22 Section 11-203(14); and 21-101 through 21-107, inclusive, to be under the new
23 title "Title 21. Maryland Year 2000 Commerce Protection Act"
24 Annotated Code of Maryland
25 (1990 Replacement Volume and 1998 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Commercial Law

2 11-203.

3 This subtitle does not make illegal the activity of:

4 (12) A political subdivision of the State in furnishing services or
5 commodities; [or]6 (13) A hospital, as defined in § 19-301 of the Health - General Article, in
7 the course of a merger or consolidation or the joint ownership and operation of major
8 medical equipment, to the extent that the activity is approved by the Health
9 Resources Planning Commission under § 19-123 of the Health - General Article; OR10 (14) GOVERNMENTAL ENTITIES AND PERSONS IN THE COURSE OF THE
11 EXCHANGE OF INFORMATION CONCERNING MEASURES THAT HAVE BEEN TAKEN OR
12 ARE TO BE TAKEN IN ORDER FOR PRODUCTS OR SERVICES OF THE GOVERNMENTAL
13 ENTITIES OR PERSONS TO BECOME YEAR 2000-READY, AS DEFINED IN TITLE 21 OF
14 THIS ARTICLE.

15 TITLE 21. MARYLAND YEAR 2000 COMMERCE PROTECTION ACT.

16 21-101.

17 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

18 (B) "DATE DATA" MEANS DATA THAT CONTAINS DATES OR THAT CONTAINS
19 BOTH DATES AND TIMES.20 (C) "GOVERNMENTAL ENTITY" MEANS THE STATE, A COUNTY, OR A
21 MUNICIPAL CORPORATION, OR ANY UNIT OF THE STATE, A COUNTY, OR A MUNICIPAL
22 CORPORATION.23 (D) "INFORMATION TECHNOLOGY SYSTEM OR PRODUCT" INCLUDES ANY
24 SOFTWARE, FIRMWARE, MICROCODE, HARDWARE, EMBEDDED CHIPS, OR OTHER
25 SYSTEM OR PRODUCT, OR ANY COMBINATION OF THOSE ITEMS, THAT CREATES,
26 READS, WRITES, CALCULATES, COMPARES, SEQUENCES, OR OTHERWISE PROCESSES
27 DATE DATA.28 (E) "SOLUTION PROVIDER" MEANS ANY PERSON THAT ACCEPTS
29 COMPENSATION OR OTHER VALUABLE CONSIDERATION FROM A GOVERNMENTAL
30 ENTITY OR PERSON TO:31 (1) ASSESS WHETHER ANY OF THE GOVERNMENTAL ENTITY'S OR
32 PERSON'S PRODUCTS OR SERVICES ARE YEAR 2000-READY; OR33 (2) ENSURE THAT ANY OF THE GOVERNMENTAL ENTITY'S OR PERSON'S
34 PRODUCTS OR SERVICES ARE YEAR 2000-READY.

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

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

3 (2) BEFORE JANUARY 2, 2001, OPERATES IN A MANNER CONSISTENT
4 WITH THE DESIGN REQUIREMENTS OR OTHER SPECIFICATION FOR THE PRODUCT OR
5 SERVICE.

6 21-102.

7 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE EXCLUSIVE
8 REMEDIES IN THIS STATE FOR RECOVERING FROM A GOVERNMENTAL ENTITY OR
9 PERSON ANY DAMAGES CAUSED BY THE FAILURE OF A PRODUCT OR SERVICE
10 PROVIDED BY THE GOVERNMENTAL ENTITY OR PERSON TO BE YEAR 2000-READY
11 SHALL BE AS PROVIDED:

12 (1) UNDER ANY PROVISION OF A CONTRACT WITH THE GOVERNMENTAL
13 ENTITY OR PERSON THAT PROVIDES SPECIFIC REMEDIES FOR THE FAILURE OF THE
14 PRODUCT OR SERVICE TO BE YEAR 2000-READY; OR

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

17 (B) ANY ACTION AGAINST A GOVERNMENTAL ENTITY REMAINS SUBJECT TO
18 ALL PROCEDURES AND LIMITATIONS ON DAMAGES OTHERWISE SPECIFIED BY LAW.

19 21-103.

20 (A) AN ACTION AGAINST A GOVERNMENTAL ENTITY OR PERSON WHOSE
21 PRODUCT OR SERVICE IS NOT YEAR 2000-READY ARISES ON THE DATE ON WHICH
22 THE PRODUCT OR SERVICE THAT RELIES ON AN INFORMATION TECHNOLOGY
23 SYSTEM OR PRODUCT:

24 (1) FAILS TO OPERATE IN A MANNER CONSISTENT WITH THE DESIGN
25 REQUIREMENTS OR OTHER SPECIFICATION FOR THE PRODUCT OR SERVICE; AND

26 (2) CAUSES DAMAGE OR LOSS.

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

31 21-104.

32 (A) IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY ACTION BROUGHT BY A
33 PLAINTIFF AGAINST ANY GOVERNMENTAL ENTITY OR PERSON WHOSE PRODUCT OR
34 SERVICE IS NOT YEAR 2000-READY THAT:

35 (1) IN THE CASE OF A GOVERNMENTAL ENTITY, THE ENTITY EXERCISED
36 DUE DILIGENCE TO ENSURE THAT IT WAS YEAR 2000-READY IN A MANNER THAT

1 WOULD BE EXERCISED BY A REASONABLY PRUDENT PERSON IN ACCORDANCE WITH
2 THE STANDARDS APPLICABLE TO THE SAME TYPE AND SIZE OF GOVERNMENTAL
3 ENTITY; OR

4 (2) IN THE CASE OF ANY OTHER PERSON, THE PERSON DETERMINED
5 AND IMPLEMENTED ACTIONS NECESSARY FOR THE PERSON TO BECOME YEAR
6 2000-READY IN ACCORDANCE WITH THE REQUIREMENTS AND STANDARDS SET
7 FORTH IN § 2-405.1 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

8 (B) IN DETERMINING WHETHER A GOVERNMENTAL ENTITY OR PERSON HAS
9 MET THE STANDARD SET OUT IN SUBSECTION (A) OF THIS SECTION, THE COURT
10 SHALL CONSIDER WHETHER THE GOVERNMENTAL ENTITY OR PERSON:

11 (1) HAS INVENTORIED ITS PRODUCTS AND SERVICES TO DETERMINE
12 WHETHER THEY ARE YEAR 2000-READY;

13 (2) CAN EVIDENCE A PLAN TO MAKE ITS PRODUCTS AND SERVICES TO
14 BE YEAR 2000-READY; AND

15 (3) HAS CONTACTED ITS CRITICAL SUPPLIERS TO DETERMINE
16 WHETHER THEY HAVE YEAR 2000 READINESS PLANS.

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

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

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

27 (D) A DIRECTOR OR OFFICER OF A CORPORATION OR ANY PERSON DULY
28 AUTHORIZED TO DIRECT OR GOVERN THE ACTIVITIES OF A PARTNERSHIP,
29 ASSOCIATION, UNINCORPORATED ASSOCIATION, OR ANY OTHER ENTITY THAT IS NOT
30 A CORPORATION IS NOT PERSONALLY LIABLE FOR DAMAGES RESULTING FROM THE
31 FAILURE OF THE CORPORATION OR OTHER ENTITY TO BECOME YEAR 2000-READY IF
32 THAT DIRECTOR, OFFICER, OR OTHER PERSON HAS DETERMINED AND
33 IMPLEMENTED ACTIONS NECESSARY FOR THE CORPORATION OR OTHER ENTITY TO
34 BECOME YEAR 2000-READY IN ACCORDANCE WITH THE REQUIREMENTS AND
35 STANDARDS SET FORTH IN § 2-405.1 OF THE CORPORATIONS AND ASSOCIATIONS
36 ARTICLE.

37 21-105.

38 THE EXCHANGE OF INFORMATION AMONG GOVERNMENTAL ENTITIES AND
39 PERSONS CONCERNING MEASURES THAT HAVE BEEN TAKEN OR ARE TO BE TAKEN

1 IN ORDER FOR THE GOVERNMENTAL ENTITIES' OR PERSONS' PRODUCTS OR
2 SERVICES TO BECOME YEAR 2000-READY DOES NOT CONSTITUTE AN ACTIVITY OR
3 CONDUCT IN THE RESTRAINT OF TRADE OR COMMERCE.

4 21-106.

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) "READINESS REVIEW" MEANS AN AUDIT, INFORMATION
8 TECHNOLOGY REVIEW, OR OTHER REVIEW OF WHETHER A GOVERNMENTAL
9 ENTITY'S OR PERSON'S PRODUCTS OR SERVICES ARE YEAR 2000-READY.

10 (3) "READINESS REVIEW DOCUMENTS" MEANS ANY DOCUMENTS
11 PREPARED FOR OR IN CONJUNCTION WITH A READINESS REVIEW.

12 (B) THIS SECTION APPLIES TO ANY READINESS REVIEW DOCUMENT
13 PREPARED AS PART OF A READINESS REVIEW TO EVALUATE AND SEEK TO IMPROVE
14 YEAR 2000 READINESS OF A GOVERNMENTAL ENTITY'S OR PERSON'S PRODUCTS OR
15 SERVICES.

16 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION:

17 (1) READINESS REVIEW DOCUMENTS ARE CONFIDENTIAL AND ARE NOT
18 DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION ARISING OUT OF
19 MATTERS RELATED TO THE SUBJECT OF A READINESS REVIEW; AND

20 (2) READINESS REVIEW DOCUMENTS DELIVERED TO A FEDERAL OR
21 STATE GOVERNMENTAL AGENCY REMAIN CONFIDENTIAL AND ARE NOT
22 DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION ARISING OUT OF
23 MATTERS RELATED TO THE SUBJECT OF A READINESS REVIEW.

24 (D) TO THE EXTENT APPLICABLE LAW EXPRESSLY AUTHORIZES ITS
25 DISCLOSURE, SUBSECTION (C) OF THIS SECTION DOES NOT APPLY TO THE
26 DISCLOSURE OF ANY INFORMATION REQUIRED BY STATUTE OR REGULATION TO BE
27 MAINTAINED BY OR PROVIDED TO A GOVERNMENTAL AGENCY WHILE THE
28 INFORMATION IS IN THE POSSESSION OF THE GOVERNMENTAL AGENCY.

29 (E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE DISCOVERY OR
30 ADMISSIBILITY IN ANY CIVIL ACTION OF ANY DOCUMENTS THAT ARE NOT
31 READINESS REVIEW DOCUMENTS.

32 21-107.

33 THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE MARYLAND YEAR 2000
34 COMMERCE PROTECTION ACT.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
36 construed only prospectively and may not be applied or interpreted to have any effect
37 on or application to any case filed before the effective date of this Act.

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

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

5 (2) Create a cause of action where none otherwise existed;

6 (3) Limit the ability of contracting parties to enter into agreements as they
7 deem appropriate on the issue of liability and damages;

8 (4) Affect the validity of existing contracts created on or before the effective
9 date of this Act regarding issues of liability and damages; or

10 (5) Be indicative of any type of industry standard relating to year 2000
11 readiness of information technology products or goods and services that rely on
12 information technology products.

13 SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the
14 Maryland General Assembly that parties contemplating any litigation regarding year
15 2000 readiness should engage in alternative dispute resolution prior to entering into
16 any litigation and that the courts actively encourage parties to seek to address legal
17 issues through an alternative dispute resolution mechanism before allowing any trial
18 on year 2000 issues to go forward.

19 SECTION 5. AND BE IT FURTHER ENACTED, That nothing in this Act may
20 be construed to preclude or limit the effect of any legislation enacted by the United
21 States relating to year 2000 readiness.

22 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 June 1, 1999.