

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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 27, 1999

CHAPTER _____

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, products,~~
6 or services because of certain date data problems; providing for certain damages
7 under certain circumstances; providing for ~~certain standards of liability and for~~
8 ~~certain defenses; limiting certain actions under certain circumstances; clarifying~~
9 ~~certain responsibilities of officers and directors of corporations and certain other~~
10 ~~persons regarding due diligence; clarifying the discoverability of certain~~
11 ~~information and documents~~ a certain affirmative defense; defining certain
12 terms; providing for the construction of this Act; providing for the termination of
13 this Act; declaring the intent of the General Assembly; and generally relating to
14 remedies ~~for Maryland government, business, commerce, and consumers~~ for
15 damages caused by the failure of information technology ~~products, products, or~~
16 services because of date data problems under certain circumstances.

17 BY repealing and reenacting, with amendments,
18 Article - Commercial Law
19 Section 11-203(12) and (13)
20 Annotated Code of Maryland
21 (1990 Replacement Volume and 1998 Supplement)

22 BY adding to

1 Article - Commercial Law
 2 Section 11-203(14); and 21-101 through ~~21-107~~ 21-104, inclusive, to be under
 3 the new title "Title 21. Maryland Year 2000 Commerce Protection Act"
 4 Annotated Code of Maryland
 5 (1990 Replacement Volume and 1998 Supplement)

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

8 **Article - Commercial Law**

9 11-203.

10 This subtitle does not make illegal the activity of:

11 (12) A political subdivision of the State in furnishing services or
 12 commodities; [or]

13 (13) A hospital, as defined in § 19-301 of the Health - General Article, in
 14 the course of a merger or consolidation or the joint ownership and operation of major
 15 medical equipment, to the extent that the activity is approved by the Health
 16 Resources Planning Commission under § 19-123 of the Health - General Article; OR

17 (14) ~~GOVERNMENTAL ENTITIES AND PERSONS IN THE COURSE OF THE~~
 18 ~~EXCHANGE OF INFORMATION CONCERNING MEASURES THAT HAVE BEEN TAKEN OR~~
 19 ~~ARE TO BE TAKEN IN ORDER FOR PRODUCTS OR SERVICES OF THE GOVERNMENTAL~~
 20 ~~ENTITIES OR PERSONS TO BECOME YEAR 2000-READY, AS DEFINED IN TITLE 21 OF~~
 21 ~~THIS ARTICLE.~~

22 TITLE 21. MARYLAND YEAR 2000 COMMERCE PROTECTION ACT.

23 21-101.

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

25 (B) "DATE DATA" MEANS DATA THAT CONTAINS DATES OR THAT CONTAINS
 26 BOTH DATES AND TIMES.

27 ~~(C) "GOVERNMENTAL ENTITY" MEANS THE STATE, A COUNTY, OR A~~
 28 ~~MUNICIPAL CORPORATION, OR ANY UNIT OF THE STATE, A COUNTY, OR A MUNICIPAL~~
 29 ~~CORPORATION.~~

30 (C) "COMPLIANCE PLAN" MEANS A WRITTEN PLAN TO INVENTORY, ASSESS,
 31 OBTAIN INFORMATION FROM CRITICAL SUPPLIERS, TEST, SCHEDULE REPAIRS,
 32 REMEDiate, AND PROVIDE A CONTINGENCY PLAN OF ACTION RELATING TO, Y2K
 33 DATE DATA PROBLEMS IN INFORMATION TECHNOLOGY SYSTEMS AND PRODUCTS.

34 (D) "CRITICAL INFORMATION TECHNOLOGY SYSTEM OR PRODUCT" MEANS AN
 35 INFORMATION TECHNOLOGY SYSTEM OR PRODUCT THE FAILURE OF WHICH MAY

1 RESULT IN AN IMMEDIATE AND SUBSTANTIAL THREAT TO PUBLIC HEALTH OR
 2 SAFETY.

3 ~~(D)~~ (E) "INFORMATION TECHNOLOGY SYSTEM OR PRODUCT" INCLUDES ANY
 4 SOFTWARE, FIRMWARE, MICROCODE, HARDWARE, EMBEDDED CHIPS, OR OTHER
 5 SYSTEM OR PRODUCT, OR ANY COMBINATION OF THOSE ITEMS, THAT CREATES,
 6 READS, WRITES, CALCULATES, COMPARES, SEQUENCES, OR OTHERWISE PROCESSES
 7 DATE DATA.

8 ~~(E)~~ (F) "SOLUTION PROVIDER" MEANS ANY PERSON THAT ACCEPTS
 9 COMPENSATION OR OTHER VALUABLE CONSIDERATION FROM A ~~GOVERNMENTAL~~
 10 ~~ENTITY OR PERSON TO:~~

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

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

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

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

18 (2) ~~BEFORE JANUARY 2, 2001~~, OPERATES IN A MANNER CONSISTENT
 19 WITH THE DESIGN REQUIREMENTS OR OTHER SPECIFICATION FOR THE PRODUCT OR
 20 SERVICE; ~~AND~~

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

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

27 (1) AUGUST 22, 1999;

28 (2) SEPTEMBER 9, 1999;

29 (3) DECEMBER 31, 1999;

30 (4) JANUARY 1, 2000;

31 (5) JANUARY 3, 2000;

32 (6) JANUARY 10, 2000;

33 (7) FEBRUARY 29, 2000;

34 (8) OCTOBER 10, 2000; AND

1 (9) JANUARY 1, 2001.

2 21-102.

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

8 (1) ~~UNDER ANY PROVISION OF A CONTRACT WITH BETWEEN THE~~
9 ~~GOVERNMENTAL ENTITY OR PERSON AND THE PLAINTIFF THAT PROVIDES SPECIFIC~~
10 ~~REMEDIES FOR THE FAILURE OF THE PRODUCT OR SERVICE TO BE YEAR~~
11 ~~2000-READY; OR~~

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

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

16 ~~21-103.~~

17 (A) ~~AN ACTION AGAINST A GOVERNMENTAL ENTITY OR PERSON WHOSE~~
18 ~~PRODUCT OR SERVICE IS NOT YEAR 2000 READY ARISES ON THE DATE ON WHICH~~
19 ~~THE PRODUCT OR SERVICE THAT RELIES ON AN INFORMATION TECHNOLOGY~~
20 ~~SYSTEM OR PRODUCT:~~

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

23 (2) ~~CAUSES DAMAGE OR LOSS.~~

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

28 (C) ~~THIS TITLE DOES NOT APPLY TO:~~

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

31 (2) ~~A CLAIM FOR WORKER'S COMPENSATION BENEFITS.~~

32 ~~21-104. 21-103.~~

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

1 (1) ~~IN THE CASE OF A GOVERNMENTAL ENTITY, THE ENTITY EXERCISED~~
2 ~~DUE DILIGENCE TO ENSURE THAT IT WAS YEAR 2000-READY IN A MANNER THAT~~
3 ~~WOULD BE EXERCISED BY A REASONABLY PRUDENT PERSON IN ACCORDANCE WITH~~
4 ~~THE STANDARDS APPLICABLE TO THE SAME TYPE AND SIZE OF GOVERNMENTAL~~
5 ~~ENTITY; OR~~

6 (2) ~~IN THE CASE OF ANY OTHER PERSON, THE PERSON DETERMINED~~
7 ~~AND IMPLEMENTED IN GOOD FAITH ACTIONS NECESSARY FOR THE PERSON TO~~
8 ~~BECOME YEAR 2000-READY IN ACCORDANCE WITH THE REQUIREMENTS AND~~
9 ~~STANDARDS SET FORTH IN § 2-405.1 OF THE CORPORATIONS AND ASSOCIATIONS~~
10 ~~ARTICLE A MANNER THAT WOULD BE EXERCISED BY A REASONABLY PRUDENT~~
11 ~~PERSON UNDER THE SAME OR SIMILAR CIRCUMSTANCES.~~

12 (B) ~~IN DETERMINING WHETHER A GOVERNMENTAL ENTITY OR PERSON HAS~~
13 ~~MET THE STANDARD SET OUT IN SUBSECTION (A) OF THIS SECTION, THE COURT~~
14 ~~SHALL CONSIDER WHETHER THE GOVERNMENTAL ENTITY OR PERSON:~~

15 (1) ~~HAS INVENTORIED ITS PRODUCTS AND SERVICES TO DETERMINE~~
16 ~~WHETHER THEY ARE YEAR 2000-READY;~~

17 (2) ~~CAN EVIDENCE A PLAN TO MAKE ITS PRODUCTS AND SERVICES TO~~
18 ~~BE YEAR 2000-READY; AND~~

19 (3) ~~HAS CONTACTED ITS CRITICAL SUPPLIERS TO DETERMINE~~
20 ~~WHETHER THEY HAVE YEAR 2000-READINESS PLANS.~~

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

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

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

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

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

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

36 (6) DEVELOPED A CONTINGENCY PLAN THAT SPECIFIED ACTIONS THAT
37 SHALL BE TAKEN IF REMEDIATION FAILS.

1 (C) THE FAILURE OF A SOLUTION PROVIDER TO PROVIDE AN EXPRESS
2 WARRANTY ON WHICH A ~~GOVERNMENTAL ENTITY OR PERSON~~ MAY RELY MAY NOT
3 BE CONSTRUED AS A FAILURE OF THE ~~GOVERNMENTAL ENTITY OR PERSON~~ TO
4 COMPLY WITH THE STANDARD SET OUT UNDER SUBSECTION (A) OF THIS SECTION IF
5 THE SOLUTION PROVIDER REPRESENTS TO THE ~~GOVERNMENTAL ENTITY OR PERSON~~
6 THAT:

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

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

11 ~~(D) A DIRECTOR OR OFFICER OF A CORPORATION OR ANY PERSON DULY~~
12 ~~AUTHORIZED TO DIRECT OR GOVERN THE ACTIVITIES OF A PARTNERSHIP,~~
13 ~~ASSOCIATION, UNINCORPORATED ASSOCIATION, OR ANY OTHER ENTITY THAT IS NOT~~
14 ~~A CORPORATION IS NOT PERSONALLY LIABLE FOR DAMAGES RESULTING FROM THE~~
15 ~~FAILURE OF THE CORPORATION OR OTHER ENTITY TO BECOME YEAR 2000 READY IF~~
16 ~~THAT DIRECTOR, OFFICER, OR OTHER PERSON HAS DETERMINED AND~~
17 ~~IMPLEMENTED ACTIONS NECESSARY FOR THE CORPORATION OR OTHER ENTITY TO~~
18 ~~BECOME YEAR 2000 READY IN ACCORDANCE WITH THE REQUIREMENTS AND~~
19 ~~STANDARDS SET FORTH IN § 2-405.1 OF THE CORPORATIONS AND ASSOCIATIONS~~
20 ~~ARTICLE.~~

21 ~~21-105. 21-104.~~

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

27 ~~21-106.~~

28 (A) ~~(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
29 ~~INDICATED.~~

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

33 ~~(3) "READINESS REVIEW DOCUMENTS" MEANS ANY DOCUMENTS~~
34 ~~PREPARED FOR OR IN CONJUNCTION WITH A READINESS REVIEW.~~

35 ~~(B) THIS SECTION APPLIES TO ANY READINESS REVIEW DOCUMENT~~
36 ~~PREPARED AS PART OF A READINESS REVIEW TO EVALUATE AND SEEK TO IMPROVE~~
37 ~~YEAR 2000 READINESS OF A GOVERNMENTAL ENTITY'S OR PERSON'S PRODUCTS OR~~
38 ~~SERVICES.~~

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

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

4 (2) ~~READINESS REVIEW DOCUMENTS DELIVERED TO A FEDERAL OR~~
5 ~~STATE GOVERNMENTAL AGENCY REMAIN CONFIDENTIAL AND ARE NOT~~
6 ~~DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION ARISING OUT OF~~
7 ~~MATTERS RELATED TO THE SUBJECT OF A READINESS REVIEW.~~

8 ~~(D) TO THE EXTENT APPLICABLE LAW EXPRESSLY AUTHORIZES ITS~~
9 ~~DISCLOSURE, SUBSECTION (C) OF THIS SECTION DOES NOT APPLY TO THE~~
10 ~~DISCLOSURE OF ANY INFORMATION REQUIRED BY STATUTE OR REGULATION TO BE~~
11 ~~MAINTAINED BY OR PROVIDED TO A GOVERNMENTAL AGENCY WHILE THE~~
12 ~~INFORMATION IS IN THE POSSESSION OF THE GOVERNMENTAL AGENCY.~~

13 ~~(E) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT THE DISCOVERY OR~~
14 ~~ADMISSIBILITY IN ANY CIVIL ACTION OF ANY DOCUMENTS THAT ARE NOT~~
15 ~~READINESS REVIEW DOCUMENTS.~~

16 ~~21-107.~~

17 ~~THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE MARYLAND YEAR 2000~~
18 ~~COMMERCE PROTECTION ACT.~~

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

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

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

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

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

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

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

1 ~~SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the~~
2 ~~Maryland General Assembly that parties contemplating any litigation regarding year~~
3 ~~2000 readiness should engage in alternative dispute resolution prior to entering into~~
4 ~~any litigation and that the courts actively encourage parties to seek to address legal~~
5 ~~issues through an alternative dispute resolution mechanism before allowing any trial~~
6 ~~on year 2000 issues to go forward.~~

7 ~~SECTION 5. 4.~~ AND BE IT FURTHER ENACTED, That nothing in this Act may
8 be construed to preclude or limit the effect of any legislation enacted by the United
9 States relating to year 2000 readiness.

10 ~~SECTION 6. 5.~~ AND BE IT FURTHER ENACTED, That this Act shall take
11 effect June 1, 1999. It shall remain effective until January 2, 2004, and at the end of
12 January 2, 2004, with no further action required by the General Assembly, this Act
13 shall be abrogated and of no further force and effect.