

SENATE BILL 554

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1999 Regular Session  
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CF HB 8

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By: **Senator Colburn**

Introduced and read first time: February 5, 1999

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 24, 1999

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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 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)

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

3 **Article - Commercial Law**

4 11-203.

5 This subtitle does not make illegal the activity of:

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

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

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

17 TITLE 21. MARYLAND YEAR 2000 COMMERCE PROTECTION ACT.

18 21-101.

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

20 (B) "DATE DATA" MEANS DATA THAT CONTAINS DATES OR THAT CONTAINS  
21 BOTH DATES AND TIMES.

22 ~~(C) "GOVERNMENTAL ENTITY" MEANS THE STATE, A COUNTY, OR A~~  
23 ~~MUNICIPAL CORPORATION, OR ANY UNIT OF THE STATE, A COUNTY, OR A MUNICIPAL~~  
24 ~~CORPORATION.~~

25 ~~(D)~~ (C) "INFORMATION TECHNOLOGY SYSTEM OR PRODUCT" INCLUDES ANY  
26 SOFTWARE, FIRMWARE, MICROCODE, HARDWARE, EMBEDDED CHIPS, OR OTHER  
27 SYSTEM OR PRODUCT, OR ANY COMBINATION OF THOSE ITEMS, THAT CREATES,  
28 READS, WRITES, CALCULATES, COMPARES, SEQUENCES, OR OTHERWISE PROCESSES  
29 DATE DATA.

30 ~~(E)~~ (D) "SOLUTION PROVIDER" MEANS ANY PERSON THAT ACCEPTS  
31 COMPENSATION OR OTHER VALUABLE CONSIDERATION FROM A ~~GOVERNMENTAL~~  
32 ~~ENTITY OR PERSON TO:~~

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

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

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

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

6 (2) ~~BEFORE JANUARY 2, 2001~~, OPERATES IN A MANNER CONSISTENT  
7 WITH THE DESIGN REQUIREMENTS OR OTHER SPECIFICATION FOR THE PRODUCT OR  
8 SERVICE.

9 21-102.

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

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

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

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

22 21-103.

23 (A) AN ACTION AGAINST A ~~GOVERNMENTAL ENTITY OR~~ PERSON WHOSE  
24 PRODUCT OR SERVICE IS NOT YEAR 2000-READY ARISES ON THE DATE ON OR BEFORE  
25 JANUARY 2, 2001 ON WHICH THE PRODUCT OR SERVICE THAT RELIES ON AN  
26 INFORMATION TECHNOLOGY SYSTEM OR PRODUCT:

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

29 (2) CAUSES DAMAGE OR LOSS.

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

1 21-104.

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

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

10 ~~(2) IN THE CASE OF ANY OTHER PERSON, THE PERSON DETERMINED~~  
11 ~~AND IMPLEMENTED ACTIONS NECESSARY FOR THE PERSON TO BECOME YEAR~~  
12 ~~2000-READY IN ACCORDANCE WITH THE REQUIREMENTS AND STANDARDS SET~~  
13 ~~FORTH IN § 2-405.1 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.~~

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

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

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

21 (3) HAS CONTACTED ITS CRITICAL SUPPLIERS TO DETERMINE  
22 WHETHER THEY HAVE YEAR 2000 READINESS PLANS; AND

23 (4) HAS FULLY IMPLEMENTED A PLAN TO MAKE ITS PRODUCTS AND  
24 SERVICES YEAR 2000-READY.

25 (C) THE FAILURE OF A SOLUTION PROVIDER TO PROVIDE AN EXPRESS  
26 WARRANTY ON WHICH A ~~GOVERNMENTAL ENTITY OR~~ PERSON MAY RELY MAY NOT  
27 BE CONSTRUED AS A FAILURE OF THE ~~GOVERNMENTAL ENTITY OR~~ PERSON TO  
28 COMPLY WITH THE STANDARD SET OUT UNDER SUBSECTION (A) OF THIS SECTION IF  
29 THE SOLUTION PROVIDER REPRESENTS TO THE ~~GOVERNMENTAL ENTITY OR~~ PERSON  
30 THAT:

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

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

35 (D) A DIRECTOR OR OFFICER OF A CORPORATION OR ANY PERSON DULY  
36 AUTHORIZED TO DIRECT OR GOVERN THE ACTIVITIES OF A PARTNERSHIP,  
37 ASSOCIATION, UNINCORPORATED ASSOCIATION, OR ANY OTHER ENTITY THAT IS NOT  
38 A CORPORATION IS NOT PERSONALLY LIABLE FOR DAMAGES RESULTING FROM THE

1 FAILURE OF THE CORPORATION OR OTHER ENTITY TO BECOME YEAR 2000-READY IF  
2 THAT DIRECTOR, OFFICER, OR OTHER PERSON HAS DETERMINED AND  
3 IMPLEMENTED ACTIONS NECESSARY FOR THE CORPORATION OR OTHER ENTITY TO  
4 BECOME YEAR 2000-READY IN ACCORDANCE WITH THE REQUIREMENTS AND  
5 STANDARDS SET FORTH IN § 2-405.1 OF THE CORPORATIONS AND ASSOCIATIONS  
6 ARTICLE.

7 21-105.

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

13 21-106.

14 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
15 INDICATED.

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

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

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

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

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

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

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

1     ~~(E)~~     (D)     THIS SECTION MAY NOT BE CONSTRUED TO ~~LIMIT~~ AFFECT THE  
2 DISCOVERY OR ADMISSIBILITY IN ANY CIVIL ACTION OF ANY DOCUMENTS THAT ARE  
3 NOT READINESS REVIEW DOCUMENTS.

4 21-107.

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

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

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

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

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

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

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

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

22    SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the  
23 Maryland General Assembly that parties contemplating any litigation regarding year  
24 2000 readiness should engage in alternative dispute resolution prior to entering into  
25 any litigation and that the courts actively encourage parties to seek to address legal  
26 issues through an alternative dispute resolution mechanism before allowing any trial  
27 on year 2000 issues to go forward.

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

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

