

Department of Legislative Services  
Maryland General Assembly  
1999 Session

FISCAL NOTE  
Revised

Senate Bill 554 (Senator Colburn)

Judicial Proceedings

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Commercial Law - Year 2000 Commerce Protection Act

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The bill creates the Maryland Year 2000 Commerce Protection Act to address the “Y2K problem.”

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Fiscal Summary

**State Effect:** None. The bill does not apply to governmental entities.

**Local Effect:** None.

**Small Business Effect:** Meaningful. This bill limits the legal remedies available for damages arising out of Y2K information technology failures; it provides businesses an affirmative defense consistent with the current legal standards of care required of directors; and it makes readiness review documents non-discoverable in a civil lawsuit. As a result, the bill would likely reduce the number of Y2K related lawsuits that could otherwise be filed against small businesses.

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Fiscal Analysis

**Bill Summary:** The bill creates the Maryland Year 2000 Commerce Protection Act.

*“Year 2000-Ready”:* The term “Year 2000-Ready” means any product or service that: (1) relies on an information technology system or product that includes date data; and (2) operates in a manner consistent with the design requirements or other specifications for the product/service.

*Limited Remedies:* The bill limits the available remedies for recovering damages from a

person caused by the failure of a product/service to be Year 2000-ready to remedies provided by the bill or to specific remedies provided by contract. Moreover, a person is liable only where the failure of the product/service to be Year 2000-ready is the proximate cause of the damages.

*Affirmative Defenses:* For a person whose product/service is not Year 2000-ready, the bill establishes the affirmative defense that the person determined and implemented actions necessary to become Year 2000-ready in accordance with the requirements and standards of care set forth for directors under current law.

In determining whether a person has met the affirmative defense, the court must consider whether the person: (1) has inventoried its products/services to determine whether they are Year 2000-ready; (2) can evidence a plan to make its products/services to be Year 2000-ready; (3) has contacted its critical suppliers to determine whether they have Year 2000 readiness plans; and (4) has fully implemented a plan to make its products/services Year 2000-ready.

*Antitrust Exemption:* The bill provides that the exchange of information among persons concerning measures that have been taken or will be taken in order for products/services to become Year 2000-ready does not constitute an activity or conduct in the restraint of trade or commerce.

*Non-Discoverable Readiness Review Documents:* The bill provides that readiness review documents are discoverable and admissible in evidence in a civil action arising out of a Year 2000 claim. The term “readiness review documents” refers to audits, technology reviews, and other reviews of Year 2000 readiness.

The bill is effective June 1, 1999.

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**Information Sources:** Attorney General’s Office, Department of Budget and Management, Judiciary (Administrative Office of the Courts)

**Fiscal Note History:** First Reader - March 2, 1999  
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