

Department of Legislative Services
Maryland General Assembly
1999 Session

FISCAL NOTE
Revised

House Bill 8 (Delegate Taylor, *et al.*)

Judiciary

Commercial Law - Year 2000 Commerce Protection Act

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

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.

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; (2) operates in a manner consistent with the design requirements or other specifications for the product/service; and (3) does not cause a Y2K date data problem.

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. However, the bill does not apply to a products liability action against a manufacturer for wrongful death or personal injury or a claim for workers' compensation benefits.

Affirmative Defense: For a person whose product/service is not Year 2000-ready, the bill establishes the affirmative defense that the person determined and implemented in good faith actions necessary to become Year 2000-ready in a manner that would be exercised by a reasonably prudent person under the same or similar circumstances.

In determining whether a person meets the requisite standard of care, the trier of fact must consider whether the person completed certain items in its Y2K compliance plan.

Antitrust Exemption: The bill provides that the exchange of information among governmental entities and 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.

The bill is effective June 1, 1999 and sunsets January 2, 2004.

Background: The Maryland Tort Claims Act limits the State's liability to \$100,000 per claimant for injuries arising from a single incident or occurrence. State employees are immune from suit and liability for injuries resulting from a tortious act or omission made without malice or gross negligence that is within the scope of their public duties.

Local governments are not immune from suit under the Local Government Tort Claims Act. A person may not recover against a local government employee on a judgment rendered for tortious acts or omissions committed within the scope of employment, unless the employee acted with actual malice. A local government is required to provide a legal defense for an employee in any action alleging damages resulting from tortious acts or omissions committed by the employee within the scope of employment. The local government is liable for judgments against the employee, but the liability is limited to \$250,000 for each claim and \$500,000 for total claims arising out of the same occurrence.

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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Revised - House Third Reader - March 31, 1999

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