

CHAPTER 75

COURTS

HOUSE BILL 99-1295

BY REPRESENTATIVES T. Williams, May, Alexander, Coleman, Gotlieb, Hoppe, Lawrence, McKay, Stengel, Scott, Webster, and S. Williams;
also SENATORS Blickensderfer, Anderson, Andrews, Hernandez, Wattenberg, and Weddig.

AN ACT

CONCERNING THE LIABILITY OF BUSINESSES FOR CIVIL ACTIONS ARISING FROM ELECTRONIC COMPUTING DEVICE FAILURES ASSOCIATED WITH THE YEAR 2000 DATE CHANGE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 6**LIABILITY FOR
ELECTRONIC COMPUTING DEVICE FAILURES
ASSOCIATED WITH THE YEAR 2000 DATE CHANGE**

13-21-601. Short title. THIS PART 6 SHALL BE KNOWN AND MAY BE CITED AS THE "YEAR 2000 LIABILITY ACT OF 1999".

13-21-602. Legislative declaration. THE GENERAL ASSEMBLY RECOGNIZES THAT THE IMMINENT DATE CHANGE TO THE YEAR 2000 POSES POTENTIALLY SIGNIFICANT BUT UNPREDICTABLE COMPLICATIONS AND POTENTIAL DAMAGES WITH RESPECT TO THE COMPATIBILITY AND COMPLIANCE OF CERTAIN ELECTRONIC COMPUTING DEVICES WITH SUCH DATE CHANGE. THE GENERAL ASSEMBLY FINDS THAT THE RAPID DEVELOPMENT AND ACCEPTANCE OF TECHNOLOGY NECESSARILY INCLUDES ELECTRONIC COMPUTING DEVICES, AND THAT OUR SOCIETY HAS COME TO DEPEND UPON SUCH TECHNOLOGY AND DEVICES. THE GENERAL ASSEMBLY, WHILE RECOGNIZING THE CHALLENGE THE YEAR 2000 DATE CHANGE POSES FOR BUSINESSES AND THE POTENTIAL FOR LOSS TO SUCH BUSINESSES, FINDS THAT INDUSTRIES, INSTITUTIONS, AND OTHER ENTITIES ALSO HAVE AN OBLIGATION TO TAKE MEASURES

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TO ASSURE THAT EQUIPMENT USING ELECTRONIC COMPUTING DEVICES CONTINUES TO FUNCTION AND FURTHER WISHES TO PROTECT THE CITIZENS OF THE STATE OF COLORADO WHO MAY SUFFER DAMAGES AS THE RESULT OF ELECTRONIC COMPUTING DEVICE COMPLICATIONS AND FAILURES ASSOCIATED WITH THE YEAR 2000 DATE CHANGE. THEREFORE, THE GENERAL ASSEMBLY FINDS THAT OUR SOCIETY AND STATE WILL NOT BENEFIT FROM UNMERITORIOUS LITIGATION BASED UPON THE UNSUSPECTED FAILURE OF SOME TECHNOLOGIES AND ELECTRONIC COMPUTING DEVICES AND THAT IT IS THEREFORE APPROPRIATE TO DEFINE, BUT NOT ELIMINATE, THE LIABILITY OF BUSINESS IN ORDER TO AVERT SUCH LITIGATION AND UNFORESEEN AND UNSUSPECTED INJURIES DUE TO THESE TECHNOLOGY FAILURES. THE GENERAL ASSEMBLY DETERMINES THAT IT IS APPROPRIATE TO ENCOURAGE RESPONSIBLE BEHAVIOR ON THE PART OF BUSINESS TO MAKE ALL NECESSARY AND REASONABLE EFFORTS TO IDENTIFY THE POTENTIAL FOR SUCH FAILURES AND TO ATTEMPT TO CORRECT OR OTHERWISE AVERT SUCH FAILURES BEFORE THEY OCCUR.

13-21-603. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "BUSINESS" MEANS ANY SOLE PROPRIETORSHIP, CORPORATION, SUBCHAPTER S CORPORATION, PROFESSIONAL CORPORATION, BUSINESS TRUST, ESTATE, TRUST, JOINT STOCK COMPANY, JOINT VENTURE, LIMITED LIABILITY COMPANY, PARTNERSHIP, ASSOCIATION, UNINCORPORATED ASSOCIATION, SOCIETY, OR ANY OTHER NONGOVERNMENTAL LEGAL ENTITY.

(b) "BUSINESS" DOES NOT INCLUDE A PUBLIC ENTITY, AS DEFINED IN SECTION 24-10-103 (5), C.R.S., OR A PUBLIC EMPLOYEE, AS DEFINED IN SECTION 24-10-103 (4), C.R.S.

(2) "ELECTRONIC COMPUTING DEVICE" MEANS ANY COMPUTER HARDWARE OR SOFTWARE, COMPUTER CHIP, EMBEDDED CHIP, PROCESS CONTROL EQUIPMENT, OR OTHER INFORMATION SYSTEM THAT:

(a) IS USED TO CAPTURE, STORE, MANIPULATE, OR PROCESS DATA; OR

(b) CONTROLS, MONITORS, OR ASSISTS IN THE OPERATION OF PHYSICAL APPARATUS THAT IS NOT PRIMARILY USED AS A COMPUTER BUT THAT RELIES ON AUTOMATION OR DIGITAL TECHNOLOGY TO FUNCTION, INCLUDING BUT NOT LIMITED TO VEHICLES, VESSELS, BUILDINGS, STRUCTURES, FACILITIES, ELEVATORS, MEDICAL EQUIPMENT, TRAFFIC SIGNALS, AND FACTORY MACHINERY.

(3) (a) "YEAR 2000 FAILURE" MEANS, WITH RESPECT TO AN ELECTRONIC COMPUTING DEVICE, ANY FAILURE, INCLUDING AN ELECTRICAL OR TELECOMMUNICATIONS FAILURE, THAT PREVENTS SUCH ELECTRONIC COMPUTING DEVICE FROM ACCURATELY INTERPRETING, PRODUCING, COMPUTING, GENERATING, ACCOUNTING FOR, PROCESSING, CALCULATING, COMPARING, OR SEQUENCING DATE OR TIME DATA:

(I) FROM, INTO, OR BETWEEN:

(A) THE TWENTIETH AND TWENTY-FIRST CENTURIES; OR

(B) THE YEARS 1999 AND 2000; OR

(II) WITH REGARD TO LEAP YEAR CALCULATIONS.

(b) "YEAR 2000 FAILURE" ALSO INCLUDES ANY INABILITY OF A BUSINESS TO PERFORM AN INTENDED OR REQUESTED FUNCTION BECAUSE OF THE SYSTEM FAILURE OF AN OUTSIDE PARTY, INCLUDING, BUT NOT LIMITED TO, THE FAILURE OF A GOVERNMENTAL BODY TO PROVIDE DATA, TRANSPORTATION DELAYS, ENERGY FAILURES, OR COMMUNICATION FAILURES.

13-21-604. Affirmative defense - liability associated with the year 2000 date change - directors and officers. (1) A BUSINESS' LIABILITY FOR DAMAGES IN ANY CIVIL ACTION BASED UPON A YEAR 2000 FAILURE SHALL NOT EXCEED THE AMOUNT OF ACTUAL DAMAGES.

(2) A BUSINESS SHALL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF A YEAR 2000 FAILURE IF THE BUSINESS AGAINST WHOM THE CLAIM IS MADE HAS MADE REASONABLE AND TIMELY EFFORTS TO IDENTIFY THE POTENTIAL FOR SUCH FAILURES IN ORDER TO ATTEMPT TO CORRECT OR OTHERWISE AVERT SUCH FAILURES AND HAS TAKEN THE FOLLOWING ACTIONS:

(a) INVENTORIED ALL CRITICAL ELECTRONIC COMPUTING DEVICES USED BY THE BUSINESS THAT MAY EXPERIENCE YEAR 2000 FAILURES;

(b) IDENTIFIED ALL CRITICAL SYSTEMS NECESSARY TO CONDUCT THE BUSINESS' OPERATIONS;

(c) IDENTIFIED THE POTENTIAL FOR YEAR 2000 FAILURES ASSOCIATED WITH ALL CRITICAL ELECTRONIC COMPUTING DEVICES IN RELATIONSHIP TO THE BUSINESS PURPOSES OF THE BUSINESS;

(d) PREPARED AND IMPLEMENTED A REASONABLE REMEDIATION PLAN TO REPROGRAM, FIX, REPAIR, REPLACE, OR OTHERWISE REMEDY THE ELECTRONIC COMPUTING DEVICE TO AVERT THE POTENTIAL FOR A YEAR 2000 FAILURE;

(e) COMPLIED WITH ANY AND ALL INDUSTRY-RELATED REGULATIONS OR REQUIREMENTS RELATED TO THE YEAR 2000 DATE CHANGE;

(f) CONDUCTED TESTS ON THE BUSINESS' CRITICAL SYSTEMS AND OTHER ELECTRONIC COMPUTING DEVICES FOR YEAR 2000 COMPATIBILITY; AND

(g) DEVELOPED CONTINGENCY PLANS IN THE EVENT OF ELECTRONIC COMPUTING DEVICE FAILURES.

(3) A BUSINESS MAY BE FOUND LIABLE PURSUANT TO SUBSECTION (1) OF THIS SECTION, BUT A MEMBER OF THE BOARD OF DIRECTORS, A MEMBER OF ANY COMMITTEE DESIGNATED BY THE BOARD OF DIRECTORS, AN OFFICER, A MEMBER, OR AN EMPLOYEE OF A BUSINESS AGAINST WHOM AN ACTION IS BROUGHT SHALL BE FULLY PROTECTED AGAINST AND SHALL HAVE NO LIABILITY FOR ANY CLAIMS ARISING OUT OF, REGARDING, OR RELATING TO A YEAR 2000 FAILURE IF THE MEMBER, DIRECTOR, OFFICER, OR EMPLOYEE AGAINST WHOM THE CLAIM IS MADE, OR THE BUSINESS WITH

WHICH THE MEMBER, DIRECTOR, OFFICER, OR EMPLOYEE IS ASSOCIATED, HAS MADE REASONABLE EFFORTS TO IDENTIFY THE POTENTIAL FOR SUCH YEAR 2000 FAILURES AND HAS ATTEMPTED TO CORRECT OR OTHERWISE AVERT SUCH FAILURES BY TAKING THE ACTIONS DESCRIBED IN PARAGRAPHS (a) TO (g) OF SUBSECTION (2) OF THIS SECTION.

(4) PRIOR TO THE FILING OF ANY CIVIL ACTION RELATED TO A YEAR 2000 FAILURE, A BUSINESS SHALL, UPON REQUEST, PROVIDE SUPPORTING DOCUMENTATION SUMMARIZING THE ACTIONS IT HAS TAKEN PURSUANT TO PARAGRAPHS (a) TO (g) OF SUBSECTION (2) OF THIS SECTION.

(5) NOTHING IN THIS SECTION IS INTENDED TO VARY OR ALTER THE TERMS OF ANY CONTRACT, WARRANTY, OR AGREEMENT ADDRESSING ISSUES RELATING TO YEAR 2000 MATTERS.

SECTION 2. 11-71-103 (1) (c), Colorado Revised Statutes, is amended, and the said 11-71-103 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

11-71-103. Applicability of article - confidentiality of compliance review committee documents. (1) This article applies to a compliance review committee the functions of which are to evaluate and seek to improve:

(c) Compliance with federal or state statutory or regulatory requirements; ~~or~~

(e) THE ABILITY OF ELECTRONIC COMPUTING DEVICES AND ANY OTHER COMPUTERS, SOFTWARE PROGRAMS, DATABASES, NETWORK INFORMATION SYSTEMS, FIRMWARE, MICROPROCESSORS, INTERNAL TIME CLOCKS, HARDWARE, OR ANY OTHER DEVICE USED TO INTERPRET, PRODUCE, CALCULATE, COMPUTE, GENERATE, COMPARE, ACCOUNT FOR, OR SEQUENCE A DATE FROM, INTO, OR BETWEEN THE YEARS 1999 AND 2000; OR

(f) (I) COMPLIANCE WITH REGULATIONS AND GUIDELINES FOR PREPARING SYSTEMS TO HANDLE A YEAR 2000 FAILURE AND THE IMPLEMENTATION OF ANY PLANS FOR ADDRESSING THE SITUATION.

(II) FOR THE PURPOSES OF THIS SECTION:

(A) "ELECTRONIC COMPUTING DEVICE" SHALL HAVE THE SAME MEANING SET FORTH IN SECTION 13-21-603 (2), C.R.S.

(B) "YEAR 2000 FAILURE" SHALL HAVE THE SAME MEANING SET FORTH IN SECTION 13-21-603 (3), C.R.S.

SECTION 3. 13-80-101 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

13-80-101. General limitation of actions - three years. (1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within three years after the cause of action accrues, and not thereafter:

(o) (I) ALL ACTIONS FOR DAMAGES AGAINST A BUSINESS ARISING OUT OF A YEAR 2000 FAILURE.

(II) FOR PURPOSES OF THIS PARAGRAPH (o):

(A) "BUSINESS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-603 (1).

(B) "ELECTRONIC COMPUTING DEVICE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-603 (2).

(C) "YEAR 2000 FAILURE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-603 (3).

SECTION 4. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to causes of action accruing on or after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 5, 1999