

CHAPTER 178

COURTS

SENATE BILL 99-222

BY SENATORS Blickensderfer and Chlouber;
also REPRESENTATIVES Dean, May, McKay, Stengel, Taylor, and S. Williams.

AN ACT

CONCERNING THE PROVISION OF A STANDARD OF CARE FOR HOSPITAL ENTERPRISES FOR 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 9
LIABILITY OF HOSPITAL ENTERPRISES FOR
ELECTRONIC COMPUTING DEVICE FAILURES
ASSOCIATED WITH THE YEAR 2000 DATE CHANGE**

13-21-901. Definitions. AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "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.

(2) "HOSPITAL ENTERPRISE" MEANS A HOSPITAL OWNED BY THE STATE OR A

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

POLITICAL SUBDIVISION THAT QUALIFIES AS AN "ENTERPRISE" AS DEFINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION AND IS CERTIFIED PURSUANT TO SECTION 25-1-107 (1) (I) (II), C.R.S.

(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 HOSPITAL ENTERPRISE 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.

13-21-902. Affirmative defense - liability associated with the year 2000 date change. (1) A HOSPITAL ENTERPRISE SHALL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF A YEAR 2000 FAILURE IF THE HOSPITAL ENTERPRISE 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 HOSPITAL ENTERPRISE THAT MAY EXPERIENCE YEAR 2000 FAILURES;

(b) IDENTIFIED ALL CRITICAL SYSTEMS NECESSARY TO CONDUCT THE HOSPITAL ENTERPRISE'S OPERATIONS;

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

(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 HOSPITAL ENTERPRISE'S CRITICAL SYSTEMS AND OTHER ELECTRONIC COMPUTING DEVICES, AS APPROPRIATE, FOR YEAR 2000

COMPATIBILITY; AND

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

(2) NO EXEMPLARY DAMAGES SHALL BE AWARDED AGAINST A HOSPITAL ENTERPRISE FOR A YEAR 2000 FAILURE.

(3) PRIOR TO THE FILING OF ANY CIVIL ACTION RELATED TO A YEAR 2000 FAILURE, A HOSPITAL ENTERPRISE SHALL, UPON REQUEST, PROVIDE SUPPORTING DOCUMENTATION SUMMARIZING THE ACTIONS IT HAS TAKEN PURSUANT TO PARAGRAPHS (a) TO (g) OF SUBSECTION (1) OF THIS SECTION.

(4) 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. 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:

(p) (I) ALL ACTIONS FOR DAMAGES AGAINST A HOSPITAL ENTERPRISE ARISING OUT OF A YEAR 2000 FAILURE.

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

(A) "ELECTRONIC COMPUTING DEVICE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-901 (1).

(B) "HOSPITAL ENTERPRISE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-901 (2).

(C) "YEAR 2000 FAILURE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-901 (3).

SECTION 3. 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 4. 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: May 17, 1999