

CHAPTER 85

COURTS

SENATE BILL 99-170

BY SENATORS Phillips, Dennis, Hernandez, Teck, Blickensderfer, Linkhart, Nichol, Pascoe, Reeves, and Weddig; also REPRESENTATIVES Kaufman, Allen, Bacon, Chavez, Clarke, Coleman, Gordon, Gotlieb, Hagedorn, Hoppe, Keller, May, Miller, Plant, Saliman, Spradley, Stengel, Tate, Taylor, Tupa, Veiga, Vigil, and S. Williams.

AN ACT

CONCERNING THE PROTECTION OF CITIZENS AGAINST ADVERSE FINANCIAL CONSEQUENCES RESULTING 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 7
YEAR 2000 CITIZENS' PROTECTION ACT

13-21-701. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "YEAR 2000 CITIZENS' PROTECTION ACT".

13-21-702. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS THAT SOCIETY IS HEAVILY RELIANT UPON COMPUTERS, TECHNOLOGY, AND THE RAPID ELECTRONIC TRANSFER AND EXCHANGE OF ACCURATE INFORMATION AND DATA. THE GENERAL ASSEMBLY FURTHER FINDS THAT SOCIETY RELIES HEAVILY UPON COMPUTER TECHNOLOGY FOR MOST ASPECTS OF DAILY LIVING AND BUSINESS, INCLUDING BUT NOT LIMITED TO FINANCIAL TRANSACTIONS. THE GENERAL ASSEMBLY FINDS THAT RECENTLY DEVELOPED COMPUTER TECHNOLOGY IS THE OPERATIONAL BASIS FOR MUCH OF OUR CURRENT HARDWARE AND SOFTWARE, AND YET IT MAY NOT RECOGNIZE THE YEAR 2000 DATE CHANGE. THE GENERAL ASSEMBLY FINDS THAT THE RESULT MAY BE THAT IN THE YEAR 2000, MANY COMPUTER-BASED SYSTEMS MAY FAIL OR CAUSE INCORRECT DATA OR OTHER INFORMATION TO BE PROCESSED. THIS POTENTIALLY WORLD-WIDE DEFICIENCY IN COMPUTERS IS OFTEN REFERRED TO AS THE "Y2K BUG" AND MAY CAUSE SIGNIFICANT PROBLEMS IN THE TRANSFER AND EXCHANGE OF DATA AND INFORMATION IN THE YEAR 2000 AND BEYOND.

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

(2) ACCORDINGLY, THE GENERAL ASSEMBLY HEREBY DETERMINES THAT IN ORDER TO PROTECT THE CITIZENS OF THE STATE OF COLORADO, IT IS APPROPRIATE TO LIMIT THEIR LIABILITY AGAINST ADVERSE FINANCIAL RAMIFICATIONS RESULTING FROM YEAR 2000 FAILURES ASSOCIATED WITH ELECTRONIC COMPUTING DEVICES.

13-21-703. Definitions. FOR PURPOSES OF THIS ARTICLE, 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) (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" 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.

13-21-704. Individual's right to affirmative defense based on year 2000 failure. (1) AN INDIVIDUAL SHALL HAVE AN AFFIRMATIVE DEFENSE TO ANY CLAIM OR ACTION BROUGHT AGAINST THE INDIVIDUAL IF THE INDIVIDUAL ESTABLISHES THAT THE INDIVIDUAL'S DEFAULT, FAILURE TO PAY, BREACH, OMISSION, OR OTHER VIOLATION THAT IS THE BASIS OF THE CLAIM AGAINST HIM OR HER WAS CAUSED, IN WHOLE OR IN PART, BY A YEAR 2000 FAILURE ASSOCIATED WITH AN ELECTRONIC COMPUTING DEVICE, AND, IF IT WERE NOT FOR THE YEAR 2000 FAILURE, THE INDIVIDUAL WOULD HAVE BEEN ABLE TO SATISFY THE OBLIGATIONS THAT ARE THE BASIS OF THE CLAIM.

(2) IF AN INDIVIDUAL ESTABLISHES AN AFFIRMATIVE DEFENSE AS SET FORTH IN SUBSECTION (1) OF THIS SECTION, THEN THE PERSON OR ENTITY MAKING THE CLAIM AGAINST THE INDIVIDUAL SHALL NOT REASSERT THE CLAIM AGAINST WHICH THE AFFIRMATIVE DEFENSE WAS ASSERTED FOR A PERIOD OF THIRTY DAYS FROM THE DATE ON WHICH THE COURT DISMISSED THE CASE AS A RESULT OF THE AFFIRMATIVE DEFENSE. ANY STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM SHALL BE TOLLED FOR FORTY-FIVE DAYS UPON THE DISMISSAL OF THE CASE UNDER THIS SECTION.

(3) THIS SECTION SHALL NOT AFFECT THOSE TRANSACTIONS UPON WHICH A DEFAULT HAS OCCURRED PRIOR TO ANY DISRUPTION OF FINANCIAL OR DATA TRANSFER OPERATIONS ATTRIBUTABLE TO THE YEAR 2000 DATE CHANGE.

(4) THE DISMISSAL OF AN ACTION AS THE RESULT OF THE AFFIRMATIVE DEFENSE UNDER THIS SECTION SHALL NOT IMPAIR, EXTINGUISH, DISCHARGE, SATISFY, OR OTHERWISE AFFECT THE UNDERLYING OBLIGATION THAT IS THE BASIS OF THE CLAIM AGAINST WHICH THE AFFIRMATIVE DEFENSE WAS ASSERTED; EXCEPT THAT, THE INABILITY OF A PARTY TO BRING THE CLAIM BASED UPON THE OBLIGATION SHALL BE DELAYED AS SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(5) AN INDIVIDUAL WHO HAS ESTABLISHED AN AFFIRMATIVE DEFENSE AS SET FORTH IN SUBSECTION (1) OF THIS SECTION MAY DISPUTE DIRECTLY WITH A CREDIT REPORTING AGENCY OPERATING IN THIS STATE ANY ITEM OF INFORMATION IN THE INDIVIDUAL'S CONSUMER FILE RELATING TO THE SUBJECT OF THE AFFIRMATIVE DEFENSE. THE CREDIT REPORTING AGENCY SHALL COMPLY WITH THE REQUIREMENTS OF THE "COLORADO CONSUMER CREDIT REPORTING ACT", SECTIONS 12-14.3-101 TO 12-14.3-109, C.R.S., AND THE FEDERAL "FAIR CREDIT REPORTING ACT" IN RESPONDING TO THE DISPUTE. IF REQUESTED BY THE INDIVIDUAL PURSUANT TO THIS SUBSECTION (5), THE CREDIT REPORTING AGENCY SHALL INCLUDE A STATEMENT OF NO MORE THAN ONE HUNDRED WORDS IN THE INDIVIDUAL'S CONSUMER FILE IF EITHER THE STATEMENT IS AN EXPLANATION REGARDING AN ITEM OF INFORMATION THAT THE CONSUMER REPORTING AGENCY DENIES IS INACCURATE OR IF THE STATEMENT CONCERNS THE CONTENT OF THE INDIVIDUAL'S CONSUMER FILE. THE CREDIT REPORTING AGENCY SHALL NOT CHARGE THE INDIVIDUAL A FEE FOR THE INCLUSION OF THIS STATEMENT IN THE INDIVIDUAL'S CONSUMER FILE.

(6) THIS SECTION SHALL APPLY ONLY TO CAUSES OF ACTION ACCRUING ON OR AFTER JANUARY 1, 2000.

13-21-705. Repeal. THIS ARTICLE IS REPEALED, EFFECTIVE DECEMBER 31, 2006.

SECTION 2. 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 8, 1999