

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1074  
Judiciary II Committee Substitute Adopted 4/27/99  
House Committee Substitute Favorable 6/16/99

Short Title: Year 2000 Consumer Protection Act.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED  
AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING  
CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE  
BASED ON A YEAR 2000 PROBLEM.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIV of Chapter 1 of the General Statutes is amended by adding a new Article to read:

**"ARTICLE 43E.**

**"AFFIRMATIVE DEFENSE BASED ON YEAR 2000 FAILURE.**

**"§ 1-539.25. Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

(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

1           on automation or digital technology to function, including, but  
2           not limited to, vehicles, vessels, buildings, structures, facilities,  
3           elevators, medical equipment, traffic signals, and factory  
4           machinery.

5           (2) 'Person' means any natural person, partnership, corporation, body  
6           politic, and any unincorporated association, organization, or society  
7           which may sue or be sued under a common name.

8           (3) 'Year 2000 problem' means disruptions in electronic communications or  
9           the functioning of electronically controlled equipment resulting or  
10           reasonably anticipated to result from erroneous data that is or may be  
11           supplied by electronic devices in 1999 or on or after January 1, 2000.

12 **"§ 1-539.26. Right to affirmative defense based on year 2000 problem.**

13           (a) A person has an affirmative defense to any claim or action brought against the  
14           person if the person establishes that the person's default, failure to pay, breach, omission,  
15           or other violation that is the basis of the claim against the person was caused by a year  
16           2000 problem associated with an electronic computing device that is not owned,  
17           controlled, or operated by the person, and, if it were not for the year 2000 problem, the  
18           person would have been able to satisfy the obligations that are the basis of the claim.

19           (b) If a person establishes an affirmative defense as set forth in subsection (a) of  
20           this section, the court shall dismiss the claim without prejudice and the person or entity  
21           making the claim against the person shall not reassert the claim as to which the  
22           affirmative defense was asserted for a period of 60 days from the date on which the  
23           affirmative defense is granted by the court. Any statute of limitations applicable to the  
24           claim is tolled for 90 days upon the granting of the affirmative defense under this section.

25           (c) This section does not affect those transactions upon which a default has  
26           occurred before any disruption of financial or data transfer operations attributable to the  
27           year 2000 date change, and does not apply to claims for personal injury or wrongful  
28           death.

29           (d) The granting of the affirmative defense under this section does not impair,  
30           extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the  
31           basis of the claim against which the affirmative defense was asserted; except that the  
32           inability of a party to bring the claim based upon the obligation must be delayed as set  
33           forth in subsection (b) of this section.

34           (e) An individual who has established an affirmative defense as set forth in  
35           subsection (a) of this section may dispute directly with a credit reporting agency  
36           operating in this State any item of information in the individual's consumer file relating to  
37           the subject of the affirmative defense. The credit reporting agency shall comply with the  
38           requirements of the federal 'Fair Credit Reporting Act' in responding to the dispute. If  
39           requested by the individual, the credit reporting agency shall include the individual's  
40           statement of explanation regarding an item of information that the consumer reporting  
41           agency denies is inaccurate or a statement concerning the content of the individual's  
42           consumer file. The statement shall not exceed 100 words and the credit reporting agency

1 shall not charge the individual a fee for the inclusion of this statement in the individual's  
2 consumer file."

3           Section 2. This act is effective when it becomes law and shall apply to actions  
4 accruing on or after that date. The act expires October 1, 2000, except that any  
5 affirmative defense raised in a pending civil action pursuant to this act remains effective  
6 until the conclusion of that action.