

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1005  
Judiciary I Committee Substitute Adopted 4/28/99

Short Title: Year 2000 Liability Limitations.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL  
3 LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR  
4 2000 PROBLEMS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 66 of the General Statutes is amended by adding a new  
7 Article to read:

8 **"ARTICLE 35.**

9 **"YEAR 2000 LIABILITY AND DAMAGES.**

10 **"§ 66-280. Purpose.**

11 The General Assembly finds that maintaining the health and stability of the various  
12 business enterprises located in the State is in the public interest in order to ensure the  
13 uninterrupted delivery of goods and services to the State's citizenry. The General  
14 Assembly further finds that the Year 2000 problem is a one-time occurrence for which no  
15 one person is accountable and, therefore, the business enterprises of the State should not  
16 have their ability to continue to deliver goods and services impaired by having to contest  
17 lawsuits arising from Year 2000 problems over which such business enterprises and  
18 governmental units have no control. This Article is intended to place prudent limitations  
19 on the potential liability of the State's business enterprises, while preserving the

1 appropriate right of recovery by persons suffering losses. This Article does not limit  
2 enforcement of laws, regulations, or permits by State or local government bodies or  
3 agencies.

4 **"§ 66-281. Definitions.**

5 As used in this Article:

- 6 (1) 'Person' means any individual, corporation, partnership, association,  
7 company, business trust, joint venture, or other legal entity.
- 8 (2) 'Performed with due diligence' means made a good faith effort in its  
9 operations to prevent the occurrence of a Year 2000 problem.
- 10 (3) 'Regulated entity' means any insured financial institution or public  
11 utility.
- 12 (4) 'Third party' means, with respect to a person against whom a claim for  
13 damages is made based upon a Year 2000 problem, any of the  
14 following:
- 15 a. A person having no contractual or affiliate relationship with the  
16 person against whom a claim for damages is made based upon a  
17 Year 2000 problem.
- 18 b. A local, State, or federal governmental or quasi-governmental  
19 agency or entity.
- 20 c. A regulated entity.
- 21 (5) 'Year 2000 problem' means any computing, physical, enterprise, or  
22 distribution system complication that has occurred or may occur as a  
23 result of the change of the year from 1999 to 2000 in any person's  
24 technology system, including computer hardware, programs, software,  
25 or systems; embedded chip calculations or embedded systems;  
26 firmware; microprocessors; or management systems, business  
27 processes, or computing applications that govern, utilize, drive, or  
28 depend on the Year 2000 processing capability of the person's  
29 technology systems. 'Year 2000 problem' includes the common  
30 computer programming practice of using a two-digit field to represent a  
31 year, resulting in erroneous date calculations; an ambiguous  
32 interpretation of the term or field '00'; the failure to recognize 2000 as a  
33 leap year; algorithms that use '99' or '00' to activate another function; or  
34 the use of any other applications, software, or hardware that are date-  
35 sensitive.
- 36 (6) 'Year 2000 processing' means the processing, calculating, comparing,  
37 sequencing, displaying, storing, transmitting, or receiving of date or  
38 date-sensitive data from, into, or between the twentieth and twenty-first  
39 centuries, during the years 1999 and 2000, and leap year calculations.

40 **"§ 66-282. Liability and damages limited.**

41 (a) Subject to subsection (b) of this section, the following apply in any civil action  
42 in which the claim for damages is based upon a Year 2000 problem against a person who  
43 has performed with due diligence:

- 1           (1) No person shall be liable to any person who is (i) not in privity of  
2           contract with such person, (ii) not a person to whom an express  
3           warranty has been extended by such person, or (iii) in the case of a trust,  
4           not a beneficiary of a trust administered by such person.
- 5           (2) No person shall be liable for damages caused by a delay or interruption  
6           in performance, or in the delivery of goods or services, resulting from or  
7           in connection with (i) a Year 2000 problem to the extent such Year 2000  
8           problem was caused by a third party or (ii) a third party's Year 2000  
9           problem.
- 10          (3) No employee, officer, or director shall be liable to any person in his or  
11          her capacity as such.
- 12          (4) No person shall be liable for consequential or punitive damages.
- 13          (5) Total damages shall not exceed actual damages that are the direct result  
14          of a Year 2000 problem.
- 15          (b) This section does not affect the right of recovery for damages in connection  
16          with wrongful death or injuries to person or tangible property.
- 17          (c) In determining whether a person performed with due diligence under  
18          subsection (a) of this section, it is prima facie evidence of a good faith effort for a  
19          regulated entity to comply with the relevant directives of its State or federal regulator."
- 20          Section 2. This act is effective when it becomes law and applies to actions  
21          with claims for damages commenced on or after that date.