

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-295
SENATE BILL 1005

AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL
LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR
2000 PROBLEMS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 35.

"Year 2000 Liability and Damages.

"§ 66-280. Purpose.

The General Assembly finds that maintaining the health and stability of the various business enterprises located in the State is in the public interest in order to ensure the uninterrupted delivery of goods and services to the State's citizenry. The General Assembly further finds that the Year 2000 problem is a one-time occurrence for which no one person is accountable and, therefore, the business enterprises of the State should not have their ability to continue to deliver goods and services impaired by having to contest lawsuits arising from Year 2000 problems over which such business enterprises and governmental units have no control. This Article is intended to place prudent limitations on the potential liability of the State's business enterprises, while preserving the appropriate right of recovery by persons suffering losses. This Article does not limit enforcement of laws, regulations, or permits by State or local government bodies or agencies.

"§ 66-281. Definitions.

As used in this Article:

- (1) 'Contractual control' means the right to direct the manner in which a party performs those contractual obligations related to the claim for damages.
- (2) 'Person' means any individual, corporation, partnership, association, company, business trust, joint venture, or other legal entity.
- (3) 'Performed with due diligence' means acted with reasonable care in its operations to prevent the occurrence of a Year 2000 problem.
- (4) 'Regulated entity' means any insured financial institution or public utility.

- (5) 'Third party' means, with respect to a person against whom a claim for damages is made based upon a Year 2000 problem, any of the following:
- a. A person having no affiliate relationship with and not under the contractual control of the person against whom a claim for damages is made based upon a Year 2000 problem.
 - b. A local, State, or federal governmental or quasi-governmental agency or entity.
 - c. A regulated entity.
- (6) 'Year 2000 problem' means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capability of the person's technology systems. 'Year 2000 problem' includes the common computer programming practice of using a two-digit field to represent a year, resulting in erroneous date calculations; an ambiguous interpretation of the term or field '00'; the failure to recognize 2000 as a leap year; algorithms that use '99' or '00' to activate another function; or the failure of any other applications, software, or hardware due to their date-sensitive nature.
- (7) 'Year 2000 processing' means the processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving of date or date-sensitive data from, into, or between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

"§ 66-282. Liability and damages limited.

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

- (1) No person shall be liable to any person who is (i) not in privity of contract with such person, (ii) not a person to whom an express warranty has been extended by such person, or (iii) in the case of a trust, not a beneficiary of a trust administered by such person.
- (2) No person shall be liable for damages caused by a delay or interruption in performance, or in the delivery of goods or services, resulting from or in connection with (i) a Year 2000 problem to the extent such Year 2000 problem was caused by a third party or (ii) a third party's Year 2000 problem.
- (3) No employee, officer, or director shall be liable to any person in his or her capacity as such.

- (4) No person shall be liable for consequential or punitive damages.
- (5) Total damages shall not exceed actual damages that are the direct result of a Year 2000 problem.

(b) This section does not apply to an express warranty against damages resulting from a Year 2000 problem and does not affect the right of recovery for damages in connection with wrongful death or injuries to person or tangible property.

(c) In determining whether a person performed with due diligence under subsection (a) of this section, it is prima facie evidence of due diligence for a regulated entity to comply with the relevant directives of its State or federal regulator.

"§ 66-283. Prelitigation mediation.

(a) Mediation. – Prior to bringing a civil action claiming damages allegedly resulting from a Year 2000 problem, the person with the claim shall initiate mediation pursuant to this section. Prelitigation mediation shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the action. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(b) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section. Prior to the adoption of rules by the Supreme Court, rules and standards adopted pursuant to G.S. 7A-38.3 shall be applicable to this section to the extent such rules do not conflict with the provisions of this section.

(c) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(c1) If a party to the dispute is entitled to an affirmative defense pursuant to G.S. 1-539.26, that party may refuse to participate in the mediation. If the party agrees to participate in the mediation as provided in this section, that party is not entitled to an affirmative defense pursuant to G.S. 1-539.26 upon the filing of the civil action. If the party refuses to participate in the mediation, the mediator shall immediately prepare a certification as provided in subsection (d) of this section stating that the party refused

with good cause to participate in the mediation and has satisfied the requirements of this section.

(d) Certification That Mediation Concluded. – Immediately upon a waiver of mediation as provided in subsection (c) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate.

(e) Dismissal of Civil Action. – In any civil action asserting a claim for damages allegedly resulting from a Year 2000 problem, the court shall dismiss the action without prejudice for failure to comply with this section if the moving party asserts in his or her pleading the alleged failure to comply and establishes the alleged failure to comply, unless:

- (1) The action has been certified as a class action;
- (2) The nonmoving party establishes that the moving party was served with a copy of the request for mediation and thereafter declined to participate in a mediated settlement conference;
- (3) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (d) of this section;
- (4) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section; or
- (5) The nonmoving party demonstrates, to the satisfaction of the court, good cause for the failure to comply with this section.

(f) Time Periods Tolloed. – Time periods relating to the filing of a claim or the taking of other action with respect to a claim for damages resulting from a Year 2000 problem, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section."

Section 2. G.S. 66-283(c1), as enacted in Section 1 of this act, is effective only if Senate Bill 1074 becomes law.

Section 3. If Senate Bill 192, 1999 Regular Session, becomes law, then Article 35 of Chapter 66 of the General Statutes, as enacted by this act, is recodified as Article 36 of Chapter 66 of the General Statutes.

Section 4. This act is effective when it becomes law and applies to claims arising on or after that date. This act expires on December 31, 2004.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:20 p.m. this 14th day of July, 1999