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HOUSE BILL NO. 1663

House Amendments in [] — January 27, 1999

A BILL to amend the Code of Virginia by adding a section numbered 8.01-400.3, relating to the creation of the Year 2000 assessment privilege.

Patrons—May, Baker, Brink, Byron, Clement, Davis, DeBoer, Diamonstein, Johnson, Jones, S.C., Landes, McClure, Nixon, Plum, Purkey, Rhodes, Scott, Shuler and Watts; Senators: Howell, Newman, Schrock and Ticer

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-400.3 as follows:

§ 8.01-400.3. Year 2000 assessment privilege.

A. For purposes of this section, unless the context requires a different meaning:

"Document" means information collected, generated, or developed in the course of, and in the planning for a Year 2000 assessment [, which is clearly marked as such on the face of the document] , and includes, but is not limited to, interview notes, audits, records of inspections, findings, opinions, suggestions, conclusions, drafts, memoranda, electronic mail messages, charts, test data, drawings, electronic data, photographs, videotape, computer-generated or electronically recorded information, and surveys. "Document" shall not include information generated or developed prior to the commencement [of planning for or after the conclusion of] a Year 2000 assessment.

"Year 2000 assessment" means a voluntary evaluation of the Year 2000 processing capabilities of the technology systems any person owns or uses. The assessment shall be or have been performed between January 1, 1996, and [~~January 1, 2002~~ July 1, 2000] ; designed to solve a Year 2000 problem or avert a Year 2000 failure; and conducted at the person's request by the person's employees or an independent contractor.

"Year 2000 problem" or "Year 2000 failure" 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, without limitation, 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 capabilities of the person's technology systems. Such complications may include 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 use of any other applications, software, or hardware that are date-sensitive.

"Year 2000 processing" means the processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving of date or date-sensitive data from, into, and between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

B. [Except as provided in an order of the State Corporation Commission entered against an entity subject to the jurisdiction of said Commission,] no person in possession of or involved in the preparation of a document shall be compelled to disclose the document or a copy thereof, in whole or in part, or to reveal any information about its contents or preparation.

C. [Except as provided in an order of the State Corporation Commission entered against an entity subject to the jurisdiction of said Commission,] unless consented to in writing by the person who is the subject of the Year 2000 assessment, no document or copy thereof, in whole or in part, nor any information about its contents or preparation shall be admissible in any administrative or judicial proceeding. The person may provide such consent without categorically waiving the privilege created in this section.

D. The privilege created in this section shall not extend to a document or a copy thereof, in whole or in part, nor to information about such document's contents or preparation if prepared independently of a Year 2000 assessment.

E. A person asserting the privilege created in this section has the burden of establishing a prima facie case that the document is or was part of a Year 2000 assessment. A party seeking disclosure of the document or a copy thereof, in whole or in part, or any information about the document's contents or preparation has the burden of proving that the document or information was prepared independently of a Year 2000 assessment as provided for in subsection D.

F. The privilege created in this section shall not alter, limit, waive, or abrogate the attorney work

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60 *product doctrine or any other statutory or common law privilege.*

61 *[G. This section shall not apply in any action for personal injury or death.]*