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SENATE BILL NO. 983

Senate Amendments in [] — February 5, 1999

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 8.01 an article numbered 22, consisting of sections numbered 8.01-227.1, 8.01-227.2, and 8.01-227.3, relating to limiting liability and damages for economic loss in connection with the Year 2000 date change.

Patron—Barry

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 8.01 an article numbered 22, consisting of sections numbered 8.01-227.1, 8.01-227.2, and 8.01-227.3, as follows:

*Article 22.**Year 2000 Liability and Damages.**§ 8.01-227.1. Purpose.*

A. The General Assembly finds that maintaining the health and stability of the various business enterprises located in the Commonwealth is in the public interest in order to insure the uninterrupted delivery of goods and services to the Commonwealth'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 Commonwealth 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 have no control. This act is intended to place prudential limitations on the potential liability of the Commonwealth's business enterprises, while preserving the appropriate right of recovery by persons suffering economic losses as a result of another's fault or negligence. This act shall not affect the right of recovery for damages in connection with [wrongful death or] injuries to persons or property. [Nor shall this act limit enforcement of laws, regulations, or permits by state or local governmental bodies or agencies.]

§ 8.01-227.2. Definitions.

For purposes of this article:

"Person" means the same as defined in §1-13.19.

"Regulated entity" means any insured [~~depository~~ financial] institution or public utility.

"Third party" means, with respect to a person against whom a claim for damages is made based upon a Year 2000 problem, any (i) person having no contractual or affiliate relationship with such person, (ii) state or federal governmental or quasi-governmental agency or entity, or (iii) regulated entity.

"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, 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, or between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

§ 8.01-227.3. Liability and damages limited.

Notwithstanding any other provision of law to the contrary, the following provisions shall apply in connection with any civil action against a person in which the claim for damages is based upon a Year 2000 problem:

1. No person shall be liable to any person not in privity of contract with 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 a Year 2000 problem to the extent such Year 2000 problem was caused by a third party [or by a third party's Year 2000 problem] .
3. No employee, officer, or director shall be liable in his capacity as such to any person.
4. No person shall be liable for consequential or punitive damages.

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60 *5. Total damages shall not exceed actual direct damages.*