

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 859

An Act to promote the voluntary disclosure and free exchange of Year 2000 readiness information.

[H 1671]

Approved March 29, 1999

Whereas, at least thousands and possibly millions of information technology computer systems, software programs, and semiconductors may not be capable of recognizing certain dates after December 31, 1999; may read dates in the Year 2000 and thereafter as if those dates represent the year 1900; or may otherwise fail to accurately process those dates; and

Whereas, this situation, known colloquially and collectively as "the Year 2000 problem," could incapacitate systems that are essential to public safety, economic health, and the delivery of electricity and water, medical care, and numerous other essential goods and services in the Commonwealth of Virginia, the United States, and the world; and

Whereas, reprogramming or replacing affected systems before the Year 2000 problem incapacitates such essential systems is a matter of state, national, and global interest; and

Whereas, the prompt, candid, and thorough disclosure and exchange of information related to the Year 2000 problem would greatly enhance the ability of the public and private sectors to improve their Year 2000 readiness; and

Whereas, improving Year 2000 readiness is a matter of state, national, and global importance and a vital factor in minimizing Year 2000-related disruptions to the health, safety, welfare, and economic well-being of the citizens, businesses, and governments of the Commonwealth of Virginia, the United States, and the world; and

Whereas, massive efforts are underway in the public and private sectors to timely and adequately solve the Year 2000 problem; prepare "mission critical" information technology computer systems, software programs, and semiconductors to recognize the Year 2000; and minimize the risks associated with a Year 2000 failure; and

Whereas, these massive efforts have been impeded because of concern about the potential for legal liability associated with the disclosure and exchange of Year 2000 readiness information; and

Whereas, facilitating the voluntary dissemination and free exchange of Year 2000 readiness information, solutions, best practices, and test results between and among the public and private sectors without undue concern about legal liability is crucial to the ability of the public and private sectors to timely and adequately solve the Year 2000 problem; prepare "mission critical" information technology computer systems, software programs, and semiconductors to recognize the Year 2000; and minimize the risks associated with a Year 2000 failure; and

Whereas, the purpose of this act is to serve the state, national, and global interest in promoting the voluntary dissemination and free exchange of Year 2000 readiness information shared in good faith; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. Definitions.

For purposes of this act:

"Disclosure" and "discloses" means disseminating or providing information in good faith related to the Year 2000 problem or a Year 2000 failure without any expectation of or right to remuneration or fees therefor.

"Information" means any projection, estimate, planning document, objective, timetable, best practice, test plan, test date, or test result intended to timely and adequately solve the Year 2000 problem; prepare "mission critical" information technology computer systems, software programs, and semiconductors to recognize the Year 2000; or minimize the risks associated with a Year 2000 failure, which is clearly marked as such on the face of the information.

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

"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.

§ 2. "Safe harbor" from legal liability.

Notwithstanding any other provision of law, any person who discloses information regarding the Year 2000 problem or a Year 2000 failure shall not be liable for damages in any action brought against that person regarding such Year 2000 problem or Year 2000 failure for any injury caused by, arising out of, or relating to, the use of the information disclosed, except as provided in § 3. This act shall not apply in any action for personal injury or death.

§ 3. Exceptions.

The provisions of § 2 shall not apply if the claimant proves to the trier of fact by a preponderance of the evidence that:

- 1. The information disclosed was sold, exchanged, or provided for compensation by any person, or*
- 2. Such information (i) was material and false, inaccurate, or misleading and (ii) was disclosed (a) with the knowledge that the information was false, inaccurate, or misleading; (b) without a statement to the claimant that the disclosure was based on information supplied by another person if the information was a republication of, or otherwise a repetition of, information from such other person or made with the knowledge that the information was false, inaccurate, or misleading; or (c) with gross negligence in the determination of the truth or accuracy of the information or in the determination of whether the information was misleading.*

§ 4. Act not limiting.

Nothing in this act shall be deemed to affect any other remedy available to a person against another person with respect to information disclosed about the Year 2000 problem or a Year 2000 failure.

2. That an emergency exists and this act is in force from its passage.