

By the Committee on Judiciary and Representative Hart

1 A bill to be entitled
2 An act relating to information technology
3 resources; creating the "Commerce Protection
4 Act"; providing definitions; prescribing
5 exclusive remedies against persons, businesses,
6 and governmental agencies for damages caused by
7 the failure of their information technology
8 resources to function properly with respect to
9 date data; prescribing and limiting damages;
10 prescribing conditions precedent to maintaining
11 or defending actions; barring certain class
12 actions; requiring that actions be brought
13 within a specified time; providing immunity
14 from personal liability for directors and
15 officers of businesses under specified
16 circumstances; exempting the exchange of
17 certain information among businesses from
18 action under the Florida Antitrust Act of 1980;
19 prescribing alternative dispute-resolution
20 procedures; providing for liability for costs
21 and attorney's fees under specified
22 circumstances; providing for construction of
23 the act; repealing s. 282.4045, F.S., which
24 grants immunity from liability to governmental
25 entities for certain computer date calculation
26 failures; providing for severability; providing
27 an effective date
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Short title.--This act may be cited as the
2 "Commerce Protection Act."

3 Section 2. Definitions.--For the purposes of this act,
4 the following terms have the following meanings:

5 (1) "Business" means a person or an entity engaged in
6 providing goods or services in this state, but the term
7 excludes any governmental agency or any agency of the
8 legislative or judicial branch of state government.

9 (2) "Date data" means data that contain dates or that
10 contain both dates and times.

11 (3) "Direct economic damages" includes only economic
12 compensatory damages that follow both immediately and
13 necessarily from the failure of a business or governmental
14 agency to be year-2000 compliant. The term excludes special
15 damages, incidental damages, and exemplary or punitive
16 damages.

17 (4) "Governmental agency" includes any agency of the
18 executive branch of state government or any agency of a
19 political subdivision of the state as defined in section 1.01,
20 Florida Statutes.

21 (5)(a) "Information technology product" includes
22 software, firmware, microcode, hardware, and equipment
23 containing embedded chips or microprocessors that create,
24 read, write, calculate, compare, sequence, or otherwise
25 operate on date data.

26 (b) The information technology products of a business
27 or governmental agency are those that are owned, leased, or
28 licensed by, or under the exclusive control of, the business
29 or governmental agency and are used by it in providing its
30 goods or services.

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1 (6) An information technology product is "year-2000
2 compliant" if the product, when used in accordance with its
3 associated documentation or recommended user intervention, is
4 capable of correctly processing, providing, and receiving date
5 data, and will do so for all dates occurring between February
6 28, 1996, and March 1, 2000, when all other information
7 technology products that are used with the product properly
8 exchange date data with it. An information technology product
9 does not fail to be year-2000 compliant merely because it
10 contains a defect that is unrelated to the manner in which the
11 product processes, provides, or receives date data and that
12 only incidentally causes the product to fail to properly
13 process, provide, or receive date data.

14 Section 3. Exclusive remedies for failure to be
15 year-2000 compliant.--The exclusive remedies in this state for
16 recovering from a business or governmental agency damages
17 resulting from the failure of its information technology
18 products to be year-2000 compliant are those available for
19 breach of a contract with or a tariff filed by the business or
20 governmental agency; and all terms of that contract or tariff,
21 including limitations on and exclusions of liability and
22 disclaimers of warranty, remain fully enforceable and
23 unaffected by the provisions of this act. If there is no
24 contract or tariff, the exclusive remedies in this state for
25 recovering from a business or governmental agency damages
26 resulting from the failure of its information technology
27 products to be year-2000 compliant are those provided in
28 section 4.

29 Section 4. Damages for failure to be year-2000
30 compliant; conditions precedent to bringing or defending
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1 actions; limitation on class actions; statute of
2 limitations.--
3 (1) In the absence of a contract or tariff, any
4 business may be liable only for direct economic damages caused
5 by the failure of its information technology products to be
6 year-2000 compliant, as provided in this section.
7 (2) In the absence of a contract or tariff, any
8 governmental agency may be liable only for direct economic
9 damages caused by the failure of its information technology
10 products to be year-2000 compliant, and only within the limits
11 on the waiver of sovereign immunity established in s. 768.28,
12 Florida Statutes.
13 (3) The provisions of s. 768.81, Florida Statutes,
14 apply to the award of damages under this section.
15 (4) Damages awarded under this section shall exclude
16 any damages that the plaintiff:
17 (a) Could have avoided or mitigated with the exercise
18 of reasonable care; or
19 (b) Could have reasonably avoided or mitigated as a
20 result of any written or otherwise communicated disclosure
21 actually made by the defendant before December, 1, 1999, in a
22 manner consistent with that used in the past to give
23 notifications to the plaintiff or those similarly situated,
24 concerning whether any of the information was year-2000
25 compliant.
26 (5)(a) A business or governmental agency is not liable
27 for direct economic damages if it proves by a preponderance of
28 the evidence that it has:
29 1. Secured an assessment, by a person who possesses
30 the technical skills, experience, or competence with respect
31 to information technology resources to evaluate information

1 technology products for year-2000 compliance, to determine
2 actions necessary to make the information technology products
3 of the business or governmental agency year-2000 compliant
4 and, based on that assessment, holds before December 1, 1999,
5 a reasonable good-faith belief that those products are
6 year-2000 compliant; or
7 2. Before December 1, 1999, conducted a date-data test
8 of its information technology products and as a result of such
9 test has a reasonable good-faith belief that they are
10 year-2000 compliant.
11 (b) All defenses that would otherwise be available to
12 a business or governmental agency in any other action,
13 including an action based on negligence, remain available with
14 respect to an action under this section. Moreover, the failure
15 of a business or governmental agency to comply with paragraph
16 (a) shall not create a presumption of liability and no
17 inference may be drawn from such failure.
18 (6) Beginning January 1, 2000, upon filing of any
19 lawsuit or presentation of a claim for arbitration under
20 section 7 seeking damages under this section, and prior to the
21 filing of an answer or response, the court having jurisdiction
22 shall refer the claim to mediation under s. 44.102, Florida
23 Statutes, unless the court determines that the interests of
24 justice would not be served. The time to file the answer
25 shall be tolled for up to 60 days after service of process on
26 the defendant, or until the conclusion of the mediation,
27 whichever is earlier.
28 (7) A class action may not be maintained in this
29 state:
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1 (a) Against a governmental agency for damages caused
2 by the failure of its information technology products to be
3 year-2000 compliant.

4 (b) Against a business for damages caused by the
5 failure of its information technology products to be year-2000
6 compliant, unless each member of the class has suffered direct
7 economic damages in excess of \$50,000.

8 (8) Any action for damages under this section must be
9 commenced on or before March 1, 2002, but the running of this
10 time is tolled from the date any offer is made to submit the
11 claim to mediation until the conclusion of mediation.

12 Section 5. Immunity from liability for directors and
13 officers of businesses.--

14 (1) A director or officer of a business has absolute
15 and complete immunity from personal liability for any damages
16 resulting from the failure of the information technology
17 products of the business to be year-2000 compliant if the
18 office or director has either instructed the business, or
19 received written assurance from another officer or director
20 that the business has been instructed to:

21 (a) Take steps to determine whether their products are
22 year-2000 compliant;

23 (b) Develop and implement a plan to take actions
24 necessary to make their products year-2000 compliant; and

25 (c) Inquire whether the information technology
26 products of the entities on whose goods or services the
27 business relies are year-2000 compliant.

28 (2) A director or officer who does not have absolute
29 and complete immunity from personal liability under subsection
30 (1) nevertheless has immunity from personal liability to the
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1 extent provided in chapter 607, Florida Statutes, or chapter
2 617, Florida Statutes.

3 Section 6. Antitrust exemption with respect to
4 exchanges of information.--The exchange of information among
5 businesses concerning measures that have been taken or are to
6 be taken in order for a business to make its information
7 technology products year-2000 compliant does not constitute an
8 activity or conduct in restraint of trade or commerce under
9 chapter 542, Florida Statutes.

10 Section 7. Alternative dispute-resolution
11 procedures.--

12 (1)(a) Any party to a dispute under this act for which
13 there is no prior arbitration agreement may, before a lawsuit
14 has been filed, make an offer to the other party to submit the
15 dispute to voluntary binding arbitration under s. 44.104,
16 Florida Statutes. An offer made under this paragraph must set
17 out the maximum amount of damages that may be imposed pursuant
18 to arbitration.

19 (b) If at trial the court finds that an offer was made
20 under paragraph (a) and was rejected, the court shall award
21 attorney's fees and costs in accordance with this paragraph.

22 1. If the offer was made by the plaintiff and rejected
23 by the defendant, and if the defendant is ultimately found to
24 be liable for damages in an amount equal to or exceeding that
25 specified in the plaintiff's highest offer, the defendant must
26 pay the plaintiff's costs and reasonable attorney's fees.

27 2. If the offer was made by the defendant and rejected
28 by the plaintiff, and if the plaintiff is not ultimately
29 awarded damages in an amount exceeding that specified in the
30 defendant's highest offer, the plaintiff must pay the
31 defendant's costs and reasonable attorney's fees.

1 (2)(a) The court may submit a claim for damages under
2 this act to mediation pursuant to s. 44.102, Florida Statutes.

3 (b) A party may serve its last best offer made in
4 mediation upon another party as an offer of judgment under s.
5 678.79, Florida Statutes, and utilize all the rights and
6 remedies provided by this section.

7 (c) The court shall have discretion to require that
8 the costs of mediation be shared equally by the parties.

9 Section 8. Construction of act.--This act shall not be
10 construed to create a new cause of action or a duty to provide
11 notice concerning year-2000 compliance nor be construed to
12 mandate the content or timing of any notice concerning
13 year-2000 compliance.

14 Section 9. Section 282.4045, Florida Statutes, 1998
15 Supplement, is repealed.

16 Section 10. If any provision of this act or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the act which can be given effect without the
20 invalid provision or application, and to this end the
21 provisions of this act are declared severable.

22 Section 11. This act shall take effect upon becoming a
23 law.

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