

Bill No. CS for CS for CS SB 80

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Klein moved the following amendment:		
12			
13	Senate Amendment (with title amendment)		
14	On page 2, line 23, through page 10, line 9, delete		
15	those lines		
16			
17	and insert: <u>such a political subdivision. For purposes of</u>		
18	<u>this section, the term also includes any public or private</u>		
19	<u>university school of medicine that is part of a public or</u>		
20	<u>private university supported in whole or in part by state</u>		
21	<u>funds and that has an affiliation with a local government or</u>		
22	<u>state instrumentality under which the medical school's</u>		
23	<u>computer systems, or diagnostic or therapeutic equipment</u>		
24	<u>dependent upon date logic, are used to provide clinical</u>		
25	<u>patient care services to the public.</u>		
26	<u>(5) INFORMATION TECHNOLOGY PRODUCT.--</u>		
27	<u>(a) The term "information technology product" includes</u>		
28	<u>software, firmware, microcode, hardware, and equipment</u>		
29	<u>containing embedded chips or microprocessors that create,</u>		
30	<u>read, write, calculate, compare, sequence, or otherwise</u>		
31	<u>operate on date data.</u>		

Bill No. CS for CS for CS SB 80

Amendment No. ____

1 (b) The "information technology products" of a
2 business or governmental agency are those that are owned,
3 leased, or licensed by or under the exclusive control of the
4 business or governmental agency and are used by it in
5 providing its goods or services.

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

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

Bill No. CS for CS for CS SB 80

Amendment No. ____

1 resulting from the failure of its information technology
2 products to be year-2000 compliant are those provided in
3 section 4 of this act.

4 Section 4. Damages for failure to be year-2000
5 compliant; mediation; limitation on class actions; statute of
6 limitations.--

7 (1) Unless otherwise provided by a contract or tariff,
8 any business may be liable only for direct economic damages
9 caused by the failure of its information technology products
10 to be year-2000 compliant, as provided in this section.

11 (2) Unless otherwise provided by a contract or tariff,
12 any governmental agency may be liable only for direct economic
13 damages caused by the failure of its information technology
14 products to be year-2000 compliant, and only within the limits
15 on the waiver of sovereign immunity established in section
16 768.28, Florida Statutes.

17 (3) The provisions of section 768.81, Florida
18 Statutes, apply to the award of damages under this section.

19 (4) Damages awarded under this section shall exclude
20 any damages that the plaintiff:

21 (a) Could have avoided or mitigated with the exercise
22 of reasonable care; or

23 (b) Could have reasonably avoided or mitigated as a
24 result of any written or otherwise communicated disclosure
25 actually made by the defendant before December 1, 1999, in a
26 manner consistent with that used in the past to give
27 notifications to the plaintiff or persons similarly situated,
28 concerning whether any of the information technology products
29 of the business or governmental agency was year-2000
30 compliant.

31 (5)(a) A business or governmental agency is not liable

Bill No. CS for CS for CS SB 80

Amendment No. ____

1 for direct economic damages if it proves by a preponderance of
2 the evidence that it has:

3 1. Secured an assessment, by a person who possesses
4 the technical skills, experience, or competence with respect
5 to information technology resources to evaluate information
6 technology products for year-2000 compliance, to determine
7 actions necessary to make the information technology products
8 of the business or governmental agency year-2000 compliant
9 and, based on that assessment, holds before December 1, 1999,
10 a reasonable good-faith belief that those products are
11 year-2000 compliant; or

12 2. Before December 1, 1999, conducted a date-data test
13 of its information technology products and as a result of such
14 test has a reasonable good-faith belief that they are
15 year-2000 compliant; or

16 3. If it has five or fewer employees, made reasonable
17 efforts to assess whether the entities on whose goods or
18 services it relies and with whom it is in privity have
19 provided information technology products that are year-2000
20 compliant and, with respect to each such entity, either:

21 a. Holds before December 1, 1999, a reasonable
22 good-faith belief, based on the response to inquiries or on
23 research, that the entity has provided information technology
24 products that are year-2000 compliant; or

25 b. Discloses in writing to the other party before
26 December 1, 1999, in a manner consistent with that used in the
27 past to give written notifications to that party, that the
28 entity has provided information technology products that are
29 presumed not to be year-2000 compliant or that, based on the
30 response to inquiries, the entity is making reasonable
31 good-faith efforts to make its information technology products

Bill No. CS for CS for CS SB 80

Amendment No. ____

1 become year-2000 compliant.

2 (b) All defenses that would otherwise be available to
3 a business or governmental agency in any other action,
4 including an action based on negligence, remain available with
5 respect to an action under this section. Moreover, the failure
6 of a business or governmental agency to comply with paragraph
7 (a) shall not create a presumption of liability and no
8 inference may be drawn from such failure.

9 (6) Beginning January 1, 2000, upon the filing of any
10 lawsuit or the presentation of a claim for arbitration under
11 section 7 of this act seeking damages under this section, and
12 prior to the filing of an answer or response, the court having
13 jurisdiction shall refer the claim to mediation under section
14 44.102, Florida Statutes, unless the court determines that the
15 interests of justice would not be served. The time to file the
16 answer or response shall be tolled for up to 60 days after
17 service of process on the defendant or until the conclusion of
18 the mediation, whichever is earlier.

19 (7) A class action may not be maintained in this
20 state:

21 (a) Against a governmental agency for damages caused
22 by the failure of its information technology products to be
23 year-2000 compliant.

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

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

Bill No. CS for CS for CS SB 80

Amendment No. ____

1 Section 5. Immunity from liability for directors and
2 officers of businesses.--

3 (1) A director or officer of a business has absolute
4 and complete immunity from personal liability for any damages
5 resulting from the failure of the information technology
6 products of the business to be year-2000 compliant if the
7 officer or director has either instructed the business or
8 received written assurance from another officer or director
9 that the business has been instructed to:

10 (a) Take steps to determine whether those products are
11 year-2000 compliant;

12 (b) Develop and implement a plan to take actions
13 necessary to make those products year-2000 compliant; and

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

17 (2) A director or officer who does not have absolute
18 and complete immunity from personal liability under subsection
19 (1) nevertheless has immunity from personal liability to the
20 extent provided in chapter 607, Florida Statutes, or chapter
21 617, Florida Statutes.

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

29 Section 7. Alternative dispute-resolution
30 procedures.--

31 (1) VOLUNTARY BINDING ARBITRATION.--

Bill No. CS for CS for CS SB 80

Amendment No.

1 (a) Any party to a dispute under this act for which
2 there is no prior arbitration agreement may, before a lawsuit
3 has been filed, make an offer to the other party to submit the
4 dispute to voluntary binding arbitration under section 44.104,
5 Florida Statutes. An offer made under this paragraph must set
6 out the maximum amount of damages that may be imposed pursuant
7 to arbitration.

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

12 1. If the offer was made by the plaintiff and rejected
13 by the defendant, and if the defendant is ultimately found to
14 be liable for damages in an amount equal to or exceeding that
15 specified in the plaintiff's highest offer, the defendant must
16 pay the plaintiff's costs and reasonable attorney's fees.

17 2. If the offer was made by the defendant and rejected
18 by the plaintiff, and if the plaintiff is not ultimately
19 awarded damages in an amount exceeding that specified in the
20 defendant's highest offer, the plaintiff must pay the
21 defendant's costs and reasonable attorney's fees.

22 (2) MEDIATION.--

23 (a) The court may submit a claim for damages under
24 this act to mediation pursuant to section 44.102, Florida
25 Statutes.

26 (b) A party may serve its last best offer made in
27 mediation upon another party as an offer of judgment under
28 section 678.79, Florida Statutes, and may make use of all the
29 rights and remedies provided by this section.

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

Bill No. CS for CS for CS SB 80

Amendment No. ____

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(Redesignate subsequent sections.)

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

 On page 1, lines 21 through 24, delete those lines

and insert:

 circumstances; providing for construction of
 the