

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:		
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13	<b>Senate Amendment (with title amendment)</b>		
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>		

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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

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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

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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 and has a net  
17 worth of \$100,000 or less, made reasonable efforts to assess  
18 whether the entities on whose goods or services it relies and  
19 with whom it is in privity have provided information  
20 technology products that are year-2000 compliant and, with  
21 respect to each such entity, either:

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

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

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1 good-faith efforts to make its information technology products  
2 become year-2000 compliant.

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

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

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

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

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

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

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1 claim to mediation until the conclusion of mediation.

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

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

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

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

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

18           (2) A director or officer who does not have absolute  
19 and complete immunity from personal liability under subsection  
20 (1) nevertheless has immunity from personal liability to the  
21 extent provided in chapter 607, Florida Statutes, or chapter  
22 617, Florida Statutes.

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

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

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1           (1) VOLUNTARY BINDING ARBITRATION.--

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

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

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

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

23           (2) MEDIATION.--

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

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

31           (c) The court shall have discretion to require that

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1 the costs of mediation be shared equally by the parties.

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3 (Redesignate subsequent sections.)

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

7 And the title is amended as follows:

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

9

10 and insert:

11 circumstances; providing for construction of

12 the

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