

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

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Short title.--This act may be cited as the
31 "Commerce Protection Act."

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

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

8 (2) DATE DATA.--The term "date data" means data that
9 contain dates or that contain both dates and times.

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

17 (4) GOVERNMENTAL AGENCY.--The term "governmental
18 agency" includes any agency of the executive branch of state
19 government or any political subdivision of the state as
20 defined in section 1.01, Florida Statutes, or any agency of
21 such a political subdivision. For purposes of this section,
22 the term also includes any public or private university school
23 of medicine that is part of a public or private university
24 supported in whole or in part by state funds and that has an
25 affiliation with a local government or state instrumentality
26 under which the medical school's computer systems, or
27 diagnostic or therapeutic equipment dependent upon date logic,
28 are used to provide clinical patient care services to the
29 public.

30 (5) INFORMATION TECHNOLOGY PRODUCT.--
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1 (a) The term "information technology product" includes
2 software, firmware, microcode, hardware, and equipment
3 containing embedded chips or microprocessors that create,
4 read, write, calculate, compare, sequence, or otherwise
5 operate on date data.

6 (b) The "information technology products" of a
7 business or governmental agency are those that are owned,
8 leased, or licensed by or under the exclusive control of the
9 business or governmental agency and are used by it in
10 providing its goods or services.

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

25 Section 3. Exclusive remedies for failure to be
26 year-2000 compliant.--The exclusive remedies in this state for
27 recovering from a business or governmental agency damages
28 resulting from the failure of its information technology
29 products to be year-2000 compliant are those available for
30 breach of a contract with or a tariff filed by the business or
31 governmental agency; and all terms of that contract or tariff,

1 including limitations on and exclusions of liability and
2 disclaimers of warranty, remain fully enforceable and are
3 unaffected by the provisions of this act. If there is no
4 contract or tariff, the exclusive remedies in this state for
5 recovering from a business or governmental agency damages
6 resulting from the failure of its information technology
7 products to be year-2000 compliant are those provided in
8 section 4 of this act.

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

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

16 (2) Unless otherwise provided by a contract or tariff,
17 any governmental agency may be liable only for direct economic
18 damages caused by the failure of its information technology
19 products to be year-2000 compliant, and only within the limits
20 on the waiver of sovereign immunity established in section
21 768.28, Florida Statutes.

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

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

26 (a) Could have avoided or mitigated with the exercise
27 of reasonable care; or

28 (b) Could have reasonably avoided or mitigated as a
29 result of any written or otherwise communicated disclosure
30 actually made by the defendant before December 1, 1999, in a
31 manner consistent with that used in the past to give

1 notifications to the plaintiff or persons similarly situated,
2 concerning whether any of the information technology products
3 of the business or governmental agency was year-2000
4 compliant.

5 (5)(a) A business or governmental agency is not liable
6 for direct economic damages if it proves by a preponderance of
7 the evidence that it has:

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

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

21 3. If it has five or fewer employees and has a net
22 worth of \$100,000 or less, made reasonable efforts to assess
23 whether the entities on whose goods or services it relies and
24 with whom it is in privity have provided information
25 technology products that are year-2000 compliant and, with
26 respect to each such entity, either:

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

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1 b. Discloses in writing to the other party before
2 December 1, 1999, in a manner consistent with that used in the
3 past to give written notifications to that party, that the
4 entity has provided information technology products that are
5 presumed not to be year-2000 compliant or that, based on the
6 response to inquiries, the entity is making reasonable
7 good-faith efforts to make its information technology products
8 become year-2000 compliant.

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

16 (6) Beginning January 1, 2000, upon the filing of any
17 lawsuit or the presentation of a claim for arbitration under
18 section 7 of this act seeking damages under this section, and
19 prior to the filing of an answer or response, the court having
20 jurisdiction shall refer the claim to mediation under section
21 44.102, Florida Statutes, unless the court determines that the
22 interests of justice would not be served. The time to file the
23 answer or response shall be tolled for up to 60 days after
24 service of process on the defendant or until the conclusion of
25 the mediation, whichever is earlier.

26 (7) A class action may not be maintained in this
27 state:

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

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

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

9 Section 5. Immunity from liability for directors and
10 officers of businesses.--

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

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

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

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

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

30 Section 6. Antitrust exemption with respect to
31 exchanges of information.--The exchange of information among

1 businesses concerning measures that have been taken or are to
2 be taken in order for a business to make its information
3 technology products year-2000 compliant does not constitute an
4 activity or conduct in restraint of trade or commerce under
5 chapter 542, Florida Statutes.

6 Section 7. Alternative dispute-resolution
7 procedures.--

8 (1) VOLUNTARY BINDING ARBITRATION.--

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

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

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

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

30 (2) MEDIATION.--
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1 (a) The court may submit a claim for damages under
2 this act to mediation pursuant to section 44.102, Florida
3 Statutes.

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

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

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

15 Section 9. Section 282.4045, Florida Statutes, as
16 created by section 4 of chapter 98-331, Laws of Florida, is
17 repealed.

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

24 Section 11. This act shall take effect upon becoming a
25 law.

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