

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 1074
RATIFIED BILL

AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING
CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE
BASED ON A YEAR 2000 PROBLEM.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIV of Chapter 1 of the General Statutes is amended
by adding a new Article to read:

"ARTICLE 43E.

"AFFIRMATIVE DEFENSE BASED ON YEAR 2000 FAILURE.

"§ 1-539.25. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

- (1) 'Electronic computing device' means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that:
 - a. Is used to capture, store, manipulate, or process data; or
 - b. Controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including, but not limited to, vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.
- (2) 'Person' means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (3) 'Year 2000 problem' 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 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 capability of the person's technology systems. 'Year 2000 problem' includes 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 failure of any other applications, software, or hardware due to their date-sensitive nature.

"§ 1-539.26. Right to affirmative defense based on year 2000 problem.

(a) A person has an affirmative defense to any claim or action brought against the person if the person establishes that the person's default, failure to pay, breach, omission, or other violation that is the basis of the claim against the person was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by the person, and, if it were not for the year 2000

problem, the person would have been able to satisfy the obligations that are the basis of the claim.

(b) If a person establishes an affirmative defense as set forth in subsection (a) of this section, the court shall dismiss the claim without prejudice and the person or entity making the claim against the person shall not reassert the claim as to which the affirmative defense was asserted for a period of 60 days from the date on which the affirmative defense is granted by the court. Any statute of limitations applicable to the claim is tolled for 90 days upon the granting of the affirmative defense under this section.

(c) This section does not affect those transactions upon which a default has occurred before any disruption of financial or data transfer operations attributable to the year 2000 date change, and does not apply to claims for personal injury or wrongful death.

(d) The granting of the affirmative defense under this section does not impair, extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the basis of the claim against which the affirmative defense was asserted, except that the inability of a party to bring the claim based upon the obligation must be delayed as set forth in subsection (b) of this section.

(e) An individual who has established an affirmative defense as set forth in subsection (a) of this section may dispute directly with a credit reporting agency operating in this State any item of information in the individual's consumer file relating to the subject of the affirmative defense. The credit reporting agency shall comply with the requirements of the federal 'Fair Credit Reporting Act' in responding to the dispute. If requested by the individual, the credit reporting agency shall include the individual's statement of explanation regarding an item of information that the consumer reporting agency denies is inaccurate or a statement concerning the content of the individual's consumer file. The statement shall not exceed 100 words and the credit reporting agency shall not charge the individual a fee for the inclusion of this statement in the individual's consumer file.

(e1) A person who agrees to participate in prelitigation mediation as provided in G.S. 66-283 may not assert an affirmative defense as set forth in subsection (a) of this section."

Section 2. G.S. 1-539.26(e1), as enacted in Section 1 of this act, is effective only if Senate Bill 1005 becomes law.

Section 3. This act is effective when it becomes law and shall apply to actions accruing on or after that date. The act expires October 1, 2000, except that any affirmative defense raised in a pending civil action pursuant to this act remains effective until the conclusion of that action.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Dennis A. Wicker
President of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 19