

Flynn  
King  
Lamberti

SSB-1136

Commerce  
Succeeded By  
SF/HF 405

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
COMMERCE BILL BY  
CHAIRPERSON JENSEN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act limiting the liability of financial institutions for  
2 certain actions arising out of the failure of information  
3 technology as the result of a year 2000 problem.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 527A.1 LIMITATION OF LIABILITY  
2 OF FINANCIAL INSTITUTIONS -- YEAR 2000.

3 1. LEGISLATIVE INTENT. The general assembly finds that  
4 the ability of financial institutions to continue operations  
5 through the transition from the year 1999 to the year 2000 and  
6 subsequent years is essential to the economy of this state and  
7 the nation. Financial institutions are subject to both state  
8 and federal laws and regulations and are regulated by both  
9 state and federal regulatory agencies. The general assembly  
10 also finds that despite compliance with regulatory guidelines  
11 and regulations, certain events may occur during the  
12 transition from the year 1999 to the year 2000 and subsequent  
13 years that may affect operations of financial institutions.  
14 It is the intent of the general assembly to limit the  
15 liability of financial institutions that may result from year  
16 2000 problems in order to ensure that financial institutions  
17 continue to operate during and after the transition from the  
18 year 1999 to the year 2000.

19 2. DEFINITIONS. As used in this chapter, unless the  
20 context otherwise requires:

21 a. "Actual damages" means actual monetary losses  
22 proximately caused by a year 2000 problem.

23 b. "Financial institution" means a bank incorporated under  
24 the provisions of any state or federal law, a savings and loan  
25 association or savings bank incorporated under the provisions  
26 of any state or federal law, a credit union organized under  
27 the provisions of any state or federal law, a corporation  
28 licensed as an industrial loan company under chapter 536A, and  
29 any affiliate of a bank, savings and loan association, savings  
30 bank, credit union, or industrial loan company.

31 c. "Information technology" means technology involved in  
32 computer equipment and software, electrical equipment and  
33 software, telecommunications equipment and software, and other  
34 equipment, software, and systems involved in the processing of  
35 data and information.

1 d. "Year 2000 problem" means an event, circumstance,  
2 disruption, or other problem which prevents information  
3 technology from accurately processing, calculating, comparing,  
4 or sequencing date or time data or information related to  
5 either of the following:

6 (1) From, into, or between the twentieth and twenty-first  
7 centuries, or from, into, or between the years 1999 and 2000.

8 (2) Leap year calculations.

9 "Year 2000 problem" also includes an inability of a  
10 financial institution to perform its intended or requested  
11 functions because of a problem that is the result of a year  
12 2000 problem encountered by a third party including, but not  
13 limited to, the failure of a governmental entity to provide  
14 data or information, transportation delays, energy failure, or  
15 communications failure.

16 3. TIME FOR COMMENCING ACTION. An action in connection  
17 with a year 2000 problem shall not be filed against a  
18 financial institution after June 30, 2001. An action not  
19 timely filed is forever barred.

20 4. PRIVACY OF CONTRACT. A financial institution is not  
21 liable to persons not in privity of contract with such  
22 financial institution for damages resulting from a year 2000  
23 problem.

24 5. LIABILITY FOR ACTUAL DAMAGES. A financial institution  
25 shall only be held liable, if at all, for actual damages  
26 incurred by reason of a year 2000 problem. A financial  
27 institution shall not be held liable for projected losses of  
28 future income or earnings, loss of future business or  
29 employment opportunities, punitive damages, exemplary damages,  
30 consequential damages, extraordinary damages, noneconomic  
31 damages, or any other relief in excess of actual damages  
32 incurred by reason of a year 2000 problem.

33 6. AFFIRMATIVE DEFENSE. It is an affirmative defense of a  
34 financial institution to any claim, action, or proceeding  
35 alleging liability arising by reason of a year 2000 problem,

1 that the financial institution has substantially complied with  
2 year 2000 regulations, requirements, and guidelines as set  
3 forth by such financial institution's primary federal  
4 regulator.

5 EXPLANATION

6 This bill limits the liability of financial institutions  
7 for a claim based upon a year 2000 problem. The bill states  
8 that it is the intent of the general assembly to limit the  
9 liability of financial institutions that may result from year  
10 2000 problems in order to ensure that financial institutions  
11 continue to operate during and after the transition from the  
12 year 1999 to the year 2000.

13 The bill defines "year 2000 problem" as an event,  
14 circumstance, disruption, or other problem which prevents  
15 information technology from accurately processing,  
16 calculating, comparing, or sequencing date or time data or  
17 information from, into, or between the twentieth and twenty-  
18 first centuries, or from, into, or between the years 1999 and  
19 2000; or with respect to leap year calculations. The bill  
20 also provides that a year 2000 problem includes an inability  
21 of a financial institution to perform its intended or  
22 requested functions because of a problem that is the result of  
23 a year 2000 problem encountered by a third party including,  
24 but not limited to, the failure of a governmental entity to  
25 provide data or information, transportation delays, energy  
26 failure, or communications failure.

27 The bill provides that an action in connection with a year  
28 2000 problem shall not be filed against a financial  
29 institution after June 30, 2001, and that an action not timely  
30 filed is forever barred.

31 The bill provides that a financial institution is not  
32 liable to persons not in privity of contract with such  
33 financial institution for damages resulting from a year 2000  
34 problem.

35 The bill limits the liability of a financial institution,

1 if there is any liability at all, to actual damages incurred  
2 by reason of a year 2000 problem.

3 The bill also establishes that it is an affirmative defense  
4 of a financial institution to any claim, action, or proceeding  
5 alleging liability arising by reason of a year 2000 problem  
6 that the financial institution has substantially complied with  
7 year 2000 regulations, requirements, and guidelines as set  
8 forth by such financial institution's primary federal  
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REPRINTED

SENATE FILE 405  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1136)

Passed Senate, Date <sup>(P. 854)</sup> 3/30/99 Passed House, Date <sup>(P. 1322)</sup> 4/14/99  
Vote: Ayes 50 Nays 0 Vote: Ayes 56 Nays 36  
Approved April 26, 1999  
Vetted

A BILL FOR

1 An Act limiting the liability of financial institutions for  
2 certain actions arising out of the failure of information  
3 technology as the result of a year 2000 problem.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 527A.1 LIMITATION OF LIABILITY  
2 OF FINANCIAL INSTITUTIONS -- YEAR 2000.

3 1. LEGISLATIVE INTENT. The general assembly finds that  
4 the ability of financial institutions to continue operations  
5 through the transition from the year 1999 to the year 2000 and  
6 subsequent years is essential to the economy of this state and  
7 the nation. Financial institutions are subject to both state  
8 and federal laws and regulations and are regulated by both  
9 state and federal regulatory agencies. The general assembly  
10 also finds that despite compliance with regulatory guidelines  
11 and regulations, certain events may occur during the  
12 transition from the year 1999 to the year 2000 and subsequent  
13 years that may affect operations of financial institutions.  
14 It is the intent of the general assembly to limit the  
15 liability of financial institutions that may result from year  
16 2000 problems in order to ensure that financial institutions  
17 continue to operate during and after the transition from the  
18 year 1999 to the year 2000.

19 2. DEFINITIONS. As used in this chapter, unless the  
20 context otherwise requires:

21 a. "Actual damages" means actual monetary losses  
22 proximately caused by a year 2000 problem.

23 b. "Financial institution" means a bank incorporated under  
24 the provisions of any state or federal law, a savings and loan  
25 association or savings bank incorporated under the provisions  
26 of any state or federal law, a credit union organized under  
27 the provisions of any state or federal law, a corporation  
28 licensed as an industrial loan company under chapter 536A, and  
29 any affiliate of a bank, savings and loan association, savings  
30 bank, credit union, or industrial loan company.

31 c. "Information technology" means technology involved in  
32 computer equipment and software, electrical equipment and  
33 software, telecommunications equipment and software, and other  
34 equipment, software, and systems involved in the processing of  
35 data and information.

1 d. "Year 2000 problem" means an event, circumstance,  
2 disruption, or other problem which prevents information  
3 technology from accurately processing, calculating, comparing,  
4 or sequencing date or time data or information related to  
5 either of the following:

6 (1) From, into, or between the twentieth and twenty-first  
7 centuries, or from, into, or between the years 1999 and 2000.

8 (2) Leap year calculations.

9 "Year 2000 problem" also includes an inability of a  
10 financial institution to perform its intended or requested  
11 functions because of a problem that is the result of a year  
12 2000 problem encountered by a third party including, but not  
13 limited to, the failure of a governmental entity to provide  
14 data or information, transportation delays, energy failure, or  
15 communications failure.

16 3. TIME FOR COMMENCING ACTION. An action in connection  
17 with a year 2000 problem shall not be filed against a  
18 financial institution after June 30, 2001. An action not  
19 timely filed is forever barred.

20 4. PRIVACY OF CONTRACT. A financial institution is not  
21 liable to persons not in privity of contract with such  
22 financial institution for damages resulting from a year 2000  
23 problem.

24 5. LIABILITY FOR ACTUAL DAMAGES. A financial institution  
25 shall only be held liable, if at all, for actual damages  
26 incurred by reason of a year 2000 problem. A financial  
27 institution shall not be held liable for projected losses of  
28 future income or earnings, loss of future business or  
29 employment opportunities, punitive damages, exemplary damages,  
30 consequential damages, extraordinary damages, noneconomic  
31 damages, or any other relief in excess of actual damages  
32 incurred by reason of a year 2000 problem.

33 6. AFFIRMATIVE DEFENSE. It is an affirmative defense of a  
34 financial institution to any claim, action, or proceeding  
35 alleging liability arising by reason of a year 2000 problem,



1 that the financial institution has substantially complied with  
2 year 2000 regulations, requirements, and guidelines as set  
3 forth by such financial institution's primary federal  
4 regulator.

5

## EXPLANATION

6 This bill limits the liability of financial institutions  
7 for a claim based upon a year 2000 problem. The bill states  
8 that it is the intent of the general assembly to limit the  
9 liability of financial institutions that may result from year  
10 2000 problems in order to ensure that financial institutions  
11 continue to operate during and after the transition from the  
12 year 1999 to the year 2000.

13 The bill defines "year 2000 problem" as an event,  
14 circumstance, disruption, or other problem which prevents  
15 information technology from accurately processing,  
16 calculating, comparing, or sequencing date or time data or  
17 information from, into, or between the twentieth and twenty-  
18 first centuries, or from, into, or between the years 1999 and  
19 2000; or with respect to leap year calculations. The bill  
20 also provides that a year 2000 problem includes an inability  
21 of a financial institution to perform its intended or  
22 requested functions because of a problem that is the result of  
23 a year 2000 problem encountered by a third party including,  
24 but not limited to, the failure of a governmental entity to  
25 provide data or information, transportation delays, energy  
26 failure, or communications failure.

27 The bill provides that an action in connection with a year  
28 2000 problem shall not be filed against a financial  
29 institution after June 30, 2001, and that an action not timely  
30 filed is forever barred.

31 The bill provides that a financial institution is not  
32 liable to persons not in privity of contract with such  
33 financial institution for damages resulting from a year 2000  
34 problem.

35 The bill limits the liability of a financial institution,

1 if there is any liability at all, to actual damages incurred  
2 by reason of a year 2000 problem.

3 The bill also establishes that it is an affirmative defense  
4 of a financial institution to any claim, action, or proceeding  
5 alleging liability arising by reason of a year 2000 problem  
6 that the financial institution has substantially complied with  
7 year 2000 regulations, requirements, and guidelines as set  
8 forth by such financial institution's primary federal  
9 regulator.

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## SENATE FILE 405

3179

1 Amend Senate File 405 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 527A.1 LIMITATION OF  
5 LIABILITY -- YEAR 2000.

6 1. LEGISLATIVE INTENT. The general assembly finds  
7 that the ability of financial institutions to continue  
8 operations through the transition from the year 1999  
9 to the year 2000 and subsequent years is essential to  
10 the economy of this state and the nation. Financial  
11 institutions are subject to both state and federal  
12 laws and regulations and are regulated by both state  
13 and federal regulatory agencies. The general assembly  
14 also finds that despite compliance with regulatory  
15 guidelines and regulations, certain events may occur  
16 during the transition from the year 1999 to the year  
17 2000 and subsequent years that may affect operations  
18 of financial institutions. It is the intent of the  
19 general assembly to limit the liability of financial  
20 institutions, public utilities, and other persons,  
21 except a person who has manufactured or produced for  
22 sale or modified for resale any information  
23 technology, that may result from year 2000 problems in  
24 order to ensure that financial institutions, public  
25 utilities, and other persons continue to operate  
26 during and after the transition from the year 1999 to  
27 the year 2000.

28 2. DEFINITIONS. As used in this chapter, unless  
29 the context otherwise requires:

30 a. "Actual damages" means actual monetary losses  
31 proximately caused by a year 2000 problem.

32 b. "Financial institution" means a bank  
33 incorporated under the provisions of any state or  
34 federal law, a savings and loan association or savings  
35 bank incorporated under the provisions of any state or  
36 federal law, a credit union organized under the  
37 provisions of any state or federal law, and any  
38 affiliate of a bank, savings and loan association,  
39 savings bank, or credit union, or an insurance company  
40 organized under the laws of this state or admitted to  
41 do business in this state, or an agent of an insurance  
42 company licensed pursuant to chapter 522.

43 c. "Information technology" means microprocessors,  
44 computer equipment and software, telecommunications  
45 equipment and software, and other equipment, software  
46 and systems utilized in the processing of data and  
47 information, and the technology involved in processing  
48 such data and information.

49 d. "Latent year 2000 problem" means a year 2000  
50 problem that could not be discovered by observation,

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1 inspection, or testing conducted with reasonable care  
2 prior to December 31, 2001.

3 e. "Public utility" means a gas or electric entity  
4 regulated pursuant to chapter 476.

5 f. "Year 2000 problem" means an event,  
6 circumstance, disruption, or other problem which  
7 prevents information technology from accurately  
8 processing, calculating, comparing, or sequencing date  
9 or time data or information related to either of the  
10 following:

11 (1) From, into, or between the twentieth and  
12 twenty-first centuries, or from, into, or between the  
13 years 1999 and 2000.

14 (2) Leap year calculations.

15 "Year 2000 problem" also includes an inability of a  
16 financial institution or other person, except a person  
17 who has manufactured or produced for sale or modified  
18 for resale any information technology, to perform its  
19 intended or requested functions because of a problem  
20 that is the result of a year 2000 problem encountered  
21 by a third party including, but not limited to, the  
22 failure of a governmental entity to provide data or  
23 information, transportation delays, energy failure, or  
24 communications failure.

25 3. TIME FOR COMMENCING ACTION. An action in  
26 connection with a year 2000 problem shall not be filed  
27 after December 31, 2001. The time for filing an  
28 action under this section shall be extended, in the  
29 event of a latent year 2000 problem which is  
30 discovered after December 31, 2001, for a period of  
31 six months from the date a reasonably prudent person  
32 should have discovered the year 2000 problem,  
33 provided, however, that an action based upon a latent  
34 year 2000 problem shall not be filed after December  
35 31, 2002. An action not timely filed is forever  
36 barred.

37 4. PRIVACY OF CONTRACT WITH FINANCIAL INSTITUTION.  
38 A financial institution is not liable to a person not  
39 in privity of contract with such financial institution  
40 for damages resulting from a year 2000 problem.

41 5. LIABILITY FOR ACTUAL DAMAGES. Except with  
42 respect to a claim for workers compensation under  
43 chapter 85, a claim for personal injury or wrongful  
44 death, or unless otherwise provided by written  
45 contract, a financial institution, public utility, or  
46 other person, except a person who has manufactured or  
47 produced for sale or modified for resale any  
48 information technology, shall only be held liable, if  
49 at all, for actual damages incurred by reason of a  
50 year 2000 problem. A financial institution, public

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Page 3

utility, or other person, except a person who has manufactured or produced for sale or modified for resale any information technology, shall not be held liable for projected losses of future income or earnings, loss of future business or employment opportunities, punitive damages, exemplary damages, consequential damages, extraordinary damages, noneconomic damages, or any other relief in excess of actual damages incurred by reason of a year 2000 problem.

6. AFFIRMATIVE DEFENSE FOR FINANCIAL INSTITUTIONS AND PUBLIC UTILITIES. It is an affirmative defense of a financial institution and a public utility to any claim, action, or proceeding alleging liability arising by reason of a year 2000 problem that the financial institution or public utility has substantially complied with year 2000 regulations, requirements, and guidelines as set forth by such financial institution's or public utility's primary state or federal regulator. No damages shall be awarded against a financial institution or public utility that affirmatively proves such substantial compliance.

7. REASONABLE EFFORTS DEFENSE. In any claim, action, or proceeding alleging liability arising by reason of a year 2000 problem, it shall be an affirmative defense that the defendant exercised due diligence, reasonable care, or complied with the state-of-the-art in existence at the time, to prevent or remedy the year 2000 problem in the activity in which the defendant was engaged. No damages shall be awarded against a defendant who affirmatively proves such fact.

8. FORSEEABILITY. In any claim, action or proceeding alleging liability arising by reason of a year 2000 problem, except with respect to a claim for workers compensation under chapter 85, personal injury or wrongful death, or unless otherwise provided by written contract, the defendant shall not be liable unless the plaintiff establishes, by clear and convincing evidence in addition to all other requisite elements of the claim, that the defendant knew, or reasonably should have known, that its acts or omissions would cause harm to the plaintiff in the specific facts and circumstances of the claim.

9. COMPARATIVE FAULT. In an action or proceeding against a financial institution, public utility, or other person alleging actual damages arising by reason of a year 2000 problem, the apportionment, if any, of such damages shall be made pursuant to chapter 668.

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Page 4

1 For purposes of a claim arising by reason of a year  
2 2000 problem, chapter 668 shall apply to articles 3  
3 and 4 of chapter 554."

4 2. Title page, line 1, by striking the words  
5 "financial institutions" and inserting the following:  
6 "certain persons".

By JOHN W. JENSEN  
JEFF LAMBERTI  
TOM FLYNN

S-3179 FILED MARCH 29, 1999  
DEFERRED

*Adopted  
3/30/99  
(p. 854)*

## SENATE FILE 405

S-3189

1 Amend the amendment, S-3179, to Senate File 405 as  
2 follows:

3 1. Page 4, by inserting after line 3 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 527A.2 LIMITATION ON  
6 ACTIONS AGAINST PERSONS FOR ELECTRONIC FAILURE  
7 ASSOCIATED WITH A YEAR 2000 PROBLEM.

8 1. A person who transacts business in this state  
9 on matters directly or indirectly affecting real or  
10 personal property, whether tangible or intangible,  
11 mortgages, credit accounts, banking and financial  
12 transactions, or property interests in this state  
13 shall not initiate or cause to be initiated a  
14 foreclosure proceeding, default, or other adverse  
15 action against another person due to a failure of  
16 payment or performance caused by a year 2000 problem.

17 2. A person shall not initiate or cause to be  
18 initiated an adverse enforcement action, whether based  
19 on contract or otherwise, against another person who  
20 is unable to cause payment, or to act or forbear, or  
21 to cause other financial transactions to occur in a  
22 timely manner due to a year 2000 problem.

23 3. The prohibitions in subsections 1 and 2 apply  
24 to transactions relating to and including, but not  
25 limited to, mortgages, contracts, landlord and tenant  
26 relations, consumer credit obligations, utilities, and  
27 banking.

28 4. An enforcement action otherwise prohibited  
29 under subsection 1 or 2, may be commenced at any time  
30 after sixty days following the date the payment was  
31 due or the act or omission was required to be  
32 performed.

33 5. This section does not affect transactions upon  
34 which a default occurred before any disruption of  
35 financial or data transfer operations attributable to  
36 a year 2000 problem.

37 6. This section does not eliminate, but only  
38 suspends, the ability to enforce obligations to which  
39 this section applies.

40 7. A person shall not report to a credit reporting  
41 agency operating in this state negative credit  
42 information resulting from a failure of payment or  
43 performance due to a year 2000 problem."

44 2. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3189 FILED MARCH 30, 1999

ADOPTED

(p. 854)

## SENATE FILE 405

S-3187

1 Amend Senate File 405 as follows:

2 1. Page 3, by inserting after line 4 the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 527A.2 LIMITATION ON  
5 ACTIONS AGAINST PERSONS FOR ELECTRONIC FAILURE  
6 ASSOCIATED WITH A YEAR 2000 PROBLEM.

7 1. A person who transacts business in this state  
8 on matters directly or indirectly affecting real or  
9 personal property, whether tangible or intangible,  
10 mortgages, credit accounts, banking and financial  
11 transactions, or property interests in this state  
12 shall not initiate or cause to be initiated a  
13 foreclosure proceeding, default, or other adverse  
14 action against another person due to a failure of  
15 payment or performance caused by a year 2000 problem.

16 2. A person shall not initiate or cause to be  
17 initiated an adverse enforcement action, whether based  
18 on contract or otherwise, against another person who  
19 is unable to cause payment, or to act or forbear, or  
20 to cause other financial transactions to occur in a  
21 timely manner due to a year 2000 problem.

22 3. The prohibitions in subsections 1 and 2 apply  
23 to transactions relating to and including, but not  
24 limited to, mortgages, contracts, landlord and tenant  
25 relations, consumer credit obligations, utilities, and  
26 banking.

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28 under subsection 1 or 2, may be commenced at any time  
29 after sixty days following the date the payment was  
30 due or the act or omission was required to be  
31 performed.

32 5. This section does not affect transactions upon  
33 which a default occurred before any disruption of  
34 financial or data transfer operations attributable to  
35 a year 2000 problem.

36 6. This section does not eliminate, but only  
37 suspends, the ability to enforce obligations to which  
38 this section applies.

39 7. A person shall not report to a credit reporting  
40 agency operating in this state negative credit  
41 information resulting from a failure of payment or  
42 performance due to a year 2000 problem."

43 2. Title page, line 1, by striking the words  
44 "financial institutions" and inserting the following:  
45 "certain persons".

46 3. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3187 FILED MARCH 30, 1999  
RULED OUT OF ORDER

(p. 854)



H-3/30/99 Commerce  
H-4/1/99 Do Pass

SENATE FILE 405  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1136)

(AS AMENDED AND PASSED BY THE SENATE MARCH 30, 1999)

ALL New Language by the Senate

Passed Senate, Date \_\_\_\_\_ Passed House, Date 4/14/99  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 56 Nays 36  
Approved April 26, 1999  
*(p. 1322)*

**A BILL FOR**

1 An Act limiting the liability of certain persons for certain  
2 actions arising out of the failure of information technology  
3 as the result of a year 2000 problem.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 405

1 Section 1. NEW SECTION. 527A.1 LIMITATION OF LIABILITY  
2 -- YEAR 2000.

3 1. LEGISLATIVE INTENT. The general assembly finds that  
4 the ability of financial institutions to continue operations  
5 through the transition from the year 1999 to the year 2000 and  
6 subsequent years is essential to the economy of this state and  
7 the nation. Financial institutions are subject to both state  
8 and federal laws and regulations and are regulated by both  
9 state and federal regulatory agencies. The general assembly  
10 also finds that despite compliance with regulatory guidelines  
11 and regulations, certain events may occur during the  
12 transition from the year 1999 to the year 2000 and subsequent  
13 years that may affect operations of financial institutions.  
14 It is the intent of the general assembly to limit the  
15 liability of financial institutions, public utilities, and  
16 other persons, except a person who has manufactured or  
17 produced for sale or modified for resale any information  
18 technology, that may result from year 2000 problems in order  
19 to ensure that financial institutions, public utilities, and  
20 other persons continue to operate during and after the  
21 transition from the year 1999 to the year 2000.

22 2. DEFINITIONS. As used in this chapter, unless the  
23 context otherwise requires:

24 a. "Actual damages" means actual monetary losses  
25 proximately caused by a year 2000 problem.

26 b. "Financial institution" means a bank incorporated under  
27 the provisions of any state or federal law, a savings and loan  
28 association or savings bank incorporated under the provisions  
29 of any state or federal law, a credit union organized under  
30 the provisions of any state or federal law, and any affiliate  
31 of a bank, savings and loan association, savings bank, or  
32 credit union, or an insurance company organized under the laws  
33 of this state or admitted to do business in this state, or an  
34 agent of an insurance company licensed pursuant to chapter  
35 522.

1 c. "Information technology" means microprocessors,  
2 computer equipment and software, telecommunications equipment  
3 and software, and other equipment, software and systems  
4 utilized in the processing of data and information, and the  
5 technology involved in processing such data and information.

6 d. "Latent year 2000 problem" means a year 2000 problem  
7 that could not be discovered by observation, inspection, or  
8 testing conducted with reasonable care prior to December 31,  
9 2001.

10 e. "Public utility" means a gas or electric entity  
11 regulated pursuant to chapter 476.

12 f. "Year 2000 problem" means an event, circumstance,  
13 disruption, or other problem which prevents information  
14 technology from accurately processing, calculating, comparing,  
15 or sequencing date or time data or information related to  
16 either of the following:

17 (1) From, into, or between the twentieth and twenty-first  
18 centuries, or from, into, or between the years 1999 and 2000.

19 (2) Leap year calculations.

20 "Year 2000 problem" also includes an inability of a  
21 financial institution or other person, except a person who has  
22 manufactured or produced for sale or modified for resale any  
23 information technology, to perform its intended or requested  
24 functions because of a problem that is the result of a year  
25 2000 problem encountered by a third party including, but not  
26 limited to, the failure of a governmental entity to provide  
27 data or information, transportation delays, energy failure, or  
28 communications failure.

29 3. TIME FOR COMMENCING ACTION. An action in connection  
30 with a year 2000 problem shall not be filed after December 31,  
31 2001. The time for filing an action under this section shall  
32 be extended, in the event of a latent year 2000 problem which  
33 is discovered after December 31, 2001, for a period of six  
34 months from the date a reasonably prudent person should have  
35 discovered the year 2000 problem, provided, however, that an

1 action based upon a latent year 2000 problem shall not be  
2 filed after December 31, 2002. An action not timely filed is  
3 forever barred.

4 4. PRIVACY OF CONTRACT WITH FINANCIAL INSTITUTION. A  
5 financial institution is not liable to a person not in privity  
6 of contract with such financial institution for damages  
7 resulting from a year 2000 problem.

8 5. LIABILITY FOR ACTUAL DAMAGES. Except with respect to a  
9 claim for workers compensation under chapter 85, a claim for  
10 personal injury or wrongful death, or unless otherwise  
11 provided by written contract, a financial institution, public  
12 utility, or other person, except a person who has manufactured  
13 or produced for sale or modified for resale any information  
14 technology, shall only be held liable, if at all, for actual  
15 damages incurred by reason of a year 2000 problem. A  
16 financial institution, public utility, or other person, except  
17 a person who has manufactured or produced for sale or modified  
18 for resale any information technology, shall not be held  
19 liable for projected losses of future income or earnings, loss  
20 of future business or employment opportunities, punitive  
21 damages, exemplary damages, consequential damages,  
22 extraordinary damages, noneconomic damages, or any other  
23 relief in excess of actual damages incurred by reason of a  
24 year 2000 problem.

25 6. AFFIRMATIVE DEFENSE FOR FINANCIAL INSTITUTIONS AND  
26 PUBLIC UTILITIES. It is an affirmative defense of a financial  
27 institution and a public utility to any claim, action, or  
28 proceeding alleging liability arising by reason of a year 2000  
29 problem that the financial institution or public utility has  
30 substantially complied with year 2000 regulations,  
31 requirements, and guidelines as set forth by such financial  
32 institution's or public utility's primary state or federal  
33 regulator. No damages shall be awarded against a financial  
34 institution or public utility that affirmatively proves such  
35 substantial compliance.

1 7. REASONABLE EFFORTS DEFENSE. In any claim, action, or  
2 proceeding alleging liability arising by reason of a year 2000  
3 problem, it shall be an affirmative defense that the defendant  
4 exercised due diligence, reasonable care, or complied with the  
5 state-of-the-art in existence at the time, to prevent or  
6 remedy the year 2000 problem in the activity in which the  
7 defendant was engaged. No damages shall be awarded against a  
8 defendant who affirmatively proves such fact.

9 8. FORSEEABILITY. In any claim, action or proceeding  
10 alleging liability arising by reason of a year 2000 problem,  
11 except with respect to a claim for workers compensation under  
12 chapter 85, personal injury or wrongful death, or unless  
13 otherwise provided by written contract, the defendant shall  
14 not be liable unless the plaintiff establishes, by clear and  
15 convincing evidence in addition to all other requisite  
16 elements of the claim, that the defendant knew, or reasonably  
17 should have known, that its acts or omissions would cause harm  
18 to the plaintiff in the specific facts and circumstances of  
19 the claim.

20 9. COMPARATIVE FAULT. In an action or proceeding against  
21 a financial institution, public utility, or other person  
22 alleging actual damages arising by reason of a year 2000  
23 problem, the apportionment, if any, of such damages shall be  
24 made pursuant to chapter 668. For purposes of a claim arising  
25 by reason of a year 2000 problem, chapter 668 shall apply to  
26 articles 3 and 4 of chapter 554.

27 Sec. 2. NEW SECTION. 527A.2 LIMITATION ON ACTIONS  
28 AGAINST PERSONS FOR ELECTRONIC FAILURE ASSOCIATED WITH A YEAR  
29 2000 PROBLEM.

30 1. A person who transacts business in this state on  
31 matters directly or indirectly affecting real or personal  
32 property, whether tangible or intangible, mortgages, credit  
33 accounts, banking and financial transactions, or property  
34 interests in this state shall not initiate or cause to be  
35 initiated a foreclosure proceeding, default, or other adverse

1 action against another person due to a failure of payment or  
2 performance caused by a year 2000 problem.

3 2. A person shall not initiate or cause to be initiated an  
4 adverse enforcement action, whether based on contract or  
5 otherwise, against another person who is unable to cause  
6 payment, or to act or forbear, or to cause other financial  
7 transactions to occur in a timely manner due to a year 2000  
8 problem.

9 3. The prohibitions in subsections 1 and 2 apply to  
10 transactions relating to and including, but not limited to,  
11 mortgages, contracts, landlord and tenant relations, consumer  
12 credit obligations, utilities, and banking.

13 4. An enforcement action otherwise prohibited under  
14 subsection 1 or 2, may be commenced at any time after sixty  
15 days following the date the payment was due or the act or  
16 omission was required to be performed.

17 5. This section does not affect transactions upon which a  
18 default occurred before any disruption of financial or data  
19 transfer operations attributable to a year 2000 problem.

20 6. This section does not eliminate, but only suspends, the  
21 ability to enforce obligations to which this section applies.

22 7. A person shall not report to a credit reporting agency  
23 operating in this state negative credit information resulting  
24 from a failure of payment or performance due to a year 2000  
25 problem.

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## SENATE FILE 405

H-1508

1 Amend Senate File 405, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 4, by inserting after line 26 the  
 4 following:  
 5 "10. WAIVER OF LIMITATION OF LIABILITY. A  
 6 limitation on a cause of action or recovery of damages  
 7 contained in this section is deemed to be waived if  
 8 either of the following apply:  
 9 a. The financial institution, public utility, or  
 10 other person claiming the limitation of liability has  
 11 represented that the financial institution, public  
 12 utility, or other person does not have a year 2000  
 13 problem or has resolved such year 2000 problem.  
 14 b. The financial institution, public utility, or  
 15 other person claiming the limitation of liability has  
 16 not communicated in writing prior to October 1, 1999,  
 17 the existence of such limitation of liability to the  
 18 customers or clients of such financial institution,  
 19 public utility, or other person.  
 20 On or after October 1, 1999, a financial  
 21 institution, public utility, or other person shall  
 22 provide to a new customer or client written notice of  
 23 the existence of such limitation of liability, at the  
 24 time such person becomes a new customer or client."

By CHIODO of Polk

H-1508 FILED APRIL 7, 1999

*Just*  
 4/14/99 (P.1321)

## SENATE FILE 405

H-1553

1 Amend Senate File 405, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 4, lines 14 and 15, by striking the words  
 4 "by clear and convincing evidence".

By CHAPMAN of Linn

H-1553 FILED APRIL 12, 1999

*Just* 4/14/99 (P.1320)

## SENATE FILE 405

H-1554

1 Amend Senate File 405, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 3, line 35, by inserting after the word  
 4 "compliance" the following: "by clear and convincing  
 5 evidence".  
 6 2. Page 4, line 8, by inserting after the word  
 7 "fact" the following: "by clear and convincing  
 8 evidence".

By CHAPMAN of Linn

H-1554 FILED APRIL 12, 1999

*Just* 4/14/99 (P.1319)

SENATE FILE 405

H-1506

1 Amend Senate File 405, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 3, line 8, by striking the word "Except"  
4 and inserting the following:  
5 "a. Except".  
6 2. Page 3, by inserting after line 24 the  
7 following:  
8 "b. Notwithstanding paragraph "a", to ensure  
9 personal and corporate accountability, the limitation  
10 on damages provided for in this section shall not  
11 apply to a financial institution, public utility, or  
12 other person for any negligent or reckless act  
13 resulting in such damages."

By SCHRADER of Marion

H-1506 FILED APRIL 7, 1999

*Let 4/14/99 (P.1318)*

SENATE FILE 405

H-1392

1 Amend Senate File 405, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 2, line 31, by striking the figure "2001"  
4 and inserting the following: "2002".  
5 2. Page 3, line 2, by striking the figure "2002"  
6 and inserting the following: "2003".

By CHIODO of Polk

H-1392 FILED APRIL 5, 1999

*Let 4/14/99  
(P.1316)*

SENATE FILE 405

H-1400

1 Amend Senate File 405, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 4, line 13, by striking the words "the  
4 defendant" and inserting the following: "a defendant,  
5 except for a defendant who has manufactured or  
6 produced for sale or modified for resale any  
7 information technology,".

By CHIODO of Polk

H-1400 FILED APRIL 5, 1999

*W/O 4/14/99 (P.1320)*



## SENATE FILE 405

H-1509

1 Amend Senate File 405, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 101. Section 331.756, Code 1999, is  
6 amended by adding the following new subsection:

7 NEW SUBSECTION. 77A. Represent persons pursuant  
8 to section 613.20."

9 2. Page 5, by inserting after line 25 the  
10 following:

11 "Sec. 102. NEW SECTION. 613.20 IMMUNITY FOR  
12 PUBLIC PARTICIPATION -- LIABILITY FOR DAMAGES FOR  
13 ABUSE OF PROCESS.

14 1. As used in this section:

15 a. "Civil suit" means any civil claim,  
16 counterclaim, or cross-claim.

17 b. "Good faith" means a reasonable belief in the  
18 truth of the information conveyed and a genuine  
19 interest in the matter of public interest or concern.

20 c. "Public participation" means the process of  
21 making a written, oral, or symbolic nonverbal  
22 statement or communication pertaining to an issue  
23 under consideration or review by a governmental body  
24 or in a governmental proceeding, or otherwise  
25 pertaining to an issue of public interest or concern,  
26 that is intended to encourage consideration or review  
27 of the issue, influence action on the issue, or to  
28 enlist public support or action in relation to the  
29 issue.

30 d. "Symbolic nonverbal statement or communication"  
31 means an action undertaken in lieu of verbal  
32 expression that conveys the actor's message or  
33 position regarding a matter of public interest or  
34 concern.

35 2. A person is immune from civil suit in relation  
36 to the person's good faith public participation in a  
37 matter of public interest or concern.

38 3. A person immune from civil suit pursuant to  
39 subsection 2, in addition to other rights and remedies  
40 available under law, shall have the following rights  
41 in the event a civil suit is filed against such  
42 person:

43 a. To request and be granted an expedited hearing  
44 on a motion to dismiss the suit.

45 b. To have the suit dismissed upon motion if the  
46 court finds that the plaintiff is unlikely to prevail  
47 upon the merits, and that the suit was more likely  
48 than not filed for its chilling effect upon the speech  
49 or actions of the defendant or other persons.

50 c. To request and be granted an injunction staying

H-1509

H-1509

Page 2

- 1 governmental action on the public matter underlying  
2 the suit.
- 3 d. To request and be granted appropriate limits on  
4 discovery.
- 5 e. To request and be granted an expedited trial  
6 and appeal, if applicable.
- 7 f. To be represented in the suit by the attorney  
8 general, or in the alternative by the county attorney,  
9 or by court-appointed, pro bono counsel in the event  
10 both the attorney general and the county attorney  
11 cannot represent the person.
- 12 4. A person that unreasonably files a civil suit  
13 against a person immune from suit under subsection 2  
14 is liable for abuse of process and compensatory  
15 damages, including recovery of litigation costs and  
16 attorney fees, and is also liable for punitive damages  
17 if both of the following findings are made by the  
18 court:
- 19 a. The court finds by a preponderance of the  
20 evidence that the suit was primarily filed in order to  
21 chill the speech or actions of the person sued, or to  
22 deter speech or action by other parties in relation to  
23 the same plaintiff or the same matter of public  
24 interest or concern.
- 25 b. The court finds by a preponderance of the  
26 evidence that the suit cannot be supported by existing  
27 law or by a good faith argument for the extension of  
28 existing law.
- 29 Sec. 103. EFFECTIVE DATE. Sections 101 and 102 of  
30 this Act, being deemed of immediate importance, take  
31 effect upon enactment."
- 32 3. Title page, line 3, by inserting after the  
33 word "problem" the following: "and out of  
34 participation in good faith in matters of public  
35 concern, and providing an effective date".
- 36 4. By renumbering as necessary.

By FALLON of Polk

H-1509 FILED APRIL 7, 1999

*w/d 4/14/99 (P. 1314)*

## SENATE FILE 405

H-1525

- 1 Amend Senate File 405, as amended, passed, and  
2 reprinted by the Senate, as follows:
- 3 1. Page 1, by striking lines 32 through 35 and  
4 inserting the following: "credit union."

By CHAPMAN of Linn

H-1525 FILED APRIL 8, 1999

*lost 4/14/99 (P. 1315)*

## SENATE FILE 405

H-1568

1 Amend Senate File 405, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 3, by striking lines 33 through 35 and  
 4 inserting the following: "regulator. Compliance with  
 5 year 2000 regulations, requirements, or guidelines  
 6 adopted by a state or federal regulator may be proof  
 7 of compliance with the state of the art."

By CHAPMAN of Linn

H-1568 FILED APRIL 13, 1999

*W/D*  
*4/14/99 (P.1319)*

## SENATE FILE 405

H-1569

1 Amend Senate File 405, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 4, line 3, by inserting after the word  
 4 "defendant" the following: ", except for a defendant  
 5 who has manufactured or produced for sale or modified  
 6 for resale any information technology,".

By CHAPMAN of Linn

H-1569 FILED APRIL 13, 1999

*lost 4/14/99*  
*(P.1320)*

## SENATE FILE 405

H-1574

1 Amend Senate File 405, as amended, passed, and  
 2 reprinted by the Senate, as follows:  
 3 1. Page 1, by striking lines 15 through 20 and  
 4 inserting the following: "liability of financial  
 5 institutions and public utilities that may result from  
 6 year 2000 problems in order to ensure that financial  
 7 institutions continue to operate during and after  
 8 the".  
 9 2. Page 2, by striking lines 21 through 23 and  
 10 inserting the following: "financial institution or  
 11 public utility to perform its intended or requested".  
 12 3. Page 3, by striking lines 11 through 14 and  
 13 inserting the following: "provided by written  
 14 contract, a financial institution or public utility  
 15 shall only be held liable, if at all, for actual".  
 16 4. Page 3, by striking lines 16 through 18 and  
 17 inserting the following: "financial institution or  
 18 public utility shall not be held".  
 19 5. Page 4, by striking line 21 and inserting the  
 20 following: "a financial institution or public  
 21 utility".

By WISE of Lee

JACOBS of Polk

H-1574 FILED APRIL 13, 1999

*lost*  
*4/14/99 (P.1315)*

SENATE FILE 405

H-1563

- 1 Amend Senate File 405, as amended, passed, and
  - 2 reprinted by the Senate, as follows:
  - 3 1. By striking page 2, line 35, through page 3,
  - 4 line 2, and inserting the following: "discovered the
  - 5 year 2000 problem. An action not timely filed is".
- By CHAPMAN of Linn

H-1563 FILED APRIL 13, 1999

*Lost 4/14/99*  
*(P. 1316)*

SENATE FILE 405

H-1565

- 1 Amend Senate File 405, as amended, passed, and
  - 2 reprinted by the Senate, as follows:
  - 3 1. Page 2, line 33, by striking the figure "2001"
  - 4 and inserting the following: "2005".
  - 5 2. Page 3, line 2, by striking the figure "2002"
  - 6 and inserting the following: "2006".
- By CHAPMAN of Linn

H-1565 FILED APRIL 13, 1999

*Lost 4/14/99*  
*(P. 1316)*

SENATE FILE 405

H-1566

- 1 Amend Senate File 405, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 3, line 3, by inserting after the word
- 4 "barred." the following: "However, this section does
- 5 not bar claims, if insurance coverage is provided or
- 6 applicable for year 2000 problems, to the extent of
- 7 the insurance coverage. Claims based upon insurance
- 8 coverage against a person provided protections under
- 9 this section shall be brought within the statute of
- 10 limitations for such claims as otherwise provided by
- 11 law."

By CHAPMAN of Linn

H-1566 FILED APRIL 13, 1999

*Lost 4/14/99*  
*(P. 1317)*

SENATE FILE 405

H-1567

- 1 Amend Senate File 405, as amended, passed, and
  - 2 reprinted by the Senate, as follows:
  - 3 1. Page 3, line 30, by inserting after the word
  - 4 "with" the following: "the most stringent of the".
- By CHAPMAN of Linn

H-1567 FILED APRIL 13, 1999

*Lost 4/14/99 (P. 1318)*

SENATE FILE 405

H-1562

- 1 Amend Senate File 405, as amended, passed, and
  - 2 reprinted by the Senate, as follows:
  - 3 1. Page 2, line 31, by striking the figure "2001"
  - 4 and inserting the following: "2002".
  - 5 2. Page 3, line 2, by striking the figure "2002"
  - 6 and inserting the following: "2003".
- By CHAPMAN of Linn

H-1562 FILED APRIL 13, 1999

*o/o 4/14/99 (P. 1316)*



THOMAS J. VILSACK  
GOVERNOR

**OFFICE OF THE GOVERNOR**  
STATE CAPITOL  
DES MOINES, IOWA 50319  
515 281-5211  
FAX 515-281-6611

SALLY J. PEDERSON  
LT. GOVERNOR

April 26, 1999

RECEIVED

APR 26 1999

LEGISLATIVE SERVICE  
DIVISION

The Honorable Chester Culver  
Secretary of State  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

I hereby transmit Senate File 405, an act limiting the liability of certain persons for certain actions arising out of the failure of information technology as the result of a year 2000 problem.

I am unable to approve SF 405 and hereby transmit it to you in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

Many concerns have been raised about the potential for Year 2000 computer problems (Y2K). I am confident that the financial institutions, public utilities and others identified in SF 405 have taken reasonable and prudent steps to address and to alleviate these potential problems.

The taking of reasonable and prudent steps to prevent computer problems insulates financial institutions, public utilities and others from exposure to liability. Only those who have failed to take the reasonable and prudent steps to avoid problems require the immunity protection afforded under SF 405. Damages resulting from the failure to take such steps should not be borne by customers, consumers or the general public, nor should the costs of identifying and holding those parties liable be borne by innocent customers, consumers or members of the general public.



Page 2

I believe those responsible for taking reasonable and prudent steps should be held accountable when such steps are not taken and people suffer as a result. Current protections in existing law provide adequate protections against frivolous and non-meritorious suits.

For the above reasons, I hereby respectfully disapprove Senate File 405.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack", with a long horizontal flourish extending to the right.

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House

vetted

AN ACT  
LIMITING THE LIABILITY OF CERTAIN PERSONS FOR CERTAIN ACTIONS  
ARISING OUT OF THE FAILURE OF INFORMATION TECHNOLOGY AS  
THE RESULT OF A YEAR 2000 PROBLEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 527A.1 LIMITATION OF LIABILITY  
-- YEAR 2000.

1. LEGISLATIVE INTENT. The general assembly finds that the ability of financial institutions to continue operations through the transition from the year 1999 to the year 2000 and subsequent years is essential to the economy of this state and the nation. Financial institutions are subject to both state and federal laws and regulations and are regulated by both state and federal regulatory agencies. The general assembly also finds that despite compliance with regulatory guidelines and regulations, certain events may occur during the transition from the year 1999 to the year 2000 and subsequent years that may affect operations of financial institutions. It is the intent of the general assembly to limit the liability of financial institutions, public utilities, and other persons, except a person who has manufactured or produced for sale or modified for resale any information technology, that may result from year 2000 problems in order to ensure that financial institutions, public utilities, and other persons continue to operate during and after the transition from the year 1999 to the year 2000.

2. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

a. "Actual damages" means actual monetary losses proximately caused by a year 2000 problem.

b. "Financial institution" means a bank incorporated under the provisions of any state or federal law, a savings and loan association or savings bank incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, and any affiliate of a bank, savings and loan association, savings bank, or credit union, or an insurance company organized under the laws of this state or admitted to do business in this state, or an agent of an insurance company licensed pursuant to chapter 522.

c. "Information technology" means microprocessors, computer equipment and software, telecommunications equipment and software, and other equipment, software and systems utilized in the processing of data and information, and the technology involved in processing such data and information.

d. "Latent year 2000 problem" means a year 2000 problem that could not be discovered by observation, inspection, or testing conducted with reasonable care prior to December 31, 2001.

e. "Public utility" means a gas or electric entity regulated pursuant to chapter 476.

f. "Year 2000 problem" means an event, circumstance, disruption, or other problem which prevents information technology from accurately processing, calculating, comparing, or sequencing date or time data or information related to either of the following:

- (1) From, into, or between the twentieth and twenty-first centuries, or from, into, or between the years 1999 and 2000.
- (2) Leap year calculations.

"Year 2000 problem" also includes an inability of a financial institution or other person, except a person who has

manufactured or produced for sale or modified for resale any information technology, to perform its intended or requested functions because of a problem that is the result of a year 2000 problem encountered by a third party including, but not limited to, the failure of a governmental entity to provide data or information, transportation delays, energy failure, or communications failure.

3. TIME FOR COMMENCING ACTION. An action in connection with a year 2000 problem shall not be filed after December 31, 2001. The time for filing an action under this section shall be extended, in the event of a latent year 2000 problem which is discovered after December 31, 2001, for a period of six months from the date a reasonably prudent person should have discovered the year 2000 problem, provided, however, that an action based upon a latent year 2000 problem shall not be filed after December 31, 2002. An action not timely filed is forever barred.

4. PRIVACY OF CONTRACT WITH FINANCIAL INSTITUTION. A financial institution is not liable to a person not in privity of contract with such financial institution for damages resulting from a year 2000 problem.

5. LIABILITY FOR ACTUAL DAMAGES. Except with respect to a claim for workers' compensation under chapter 85, a claim for personal injury or wrongful death, or unless otherwise provided by written contract, a financial institution, public utility, or other person, except a person who has manufactured or produced for sale or modified for resale any information technology, shall only be held liable, if at all, for actual damages incurred by reason of a year 2000 problem. A financial institution, public utility, or other person, except a person who has manufactured or produced for sale or modified for resale any information technology, shall not be held liable for projected losses of future income or earnings, loss of future business or employment opportunities, punitive damages, exemplary damages, consequential damages,

extraordinary damages, noneconomic damages, or any other relief in excess of actual damages incurred by reason of a year 2000 problem.

6. AFFIRMATIVE DEFENSE FOR FINANCIAL INSTITUTIONS AND PUBLIC UTILITIES. It is an affirmative defense of a financial institution and a public utility to any claim, action, or proceeding alleging liability arising by reason of a year 2000 problem that the financial institution or public utility has substantially complied with year 2000 regulations, requirements, and guidelines as set forth by such financial institution's or public utility's primary state or federal regulator. No damages shall be awarded against a financial institution or public utility that affirmatively proves such substantial compliance.

7. REASONABLE EFFORTS DEFENSE. In any claim, action, or proceeding alleging liability arising by reason of a year 2000 problem, it shall be an affirmative defense that the defendant exercised due diligence, reasonable care, or complied with the state-of-the-art in existence at the time, to prevent or remedy the year 2000 problem in the activity in which the defendant was engaged. No damages shall be awarded against a defendant who affirmatively proves such fact.

8. FORSEEABILITY. In any claim, action or proceeding alleging liability arising by reason of a year 2000 problem, except with respect to a claim for workers' compensation under chapter 85, personal injury or wrongful death, or unless otherwise provided by written contract, the defendant shall not be liable unless the plaintiff establishes, by clear and convincing evidence in addition to all other requisite elements of the claim, that the defendant knew, or reasonably should have known, that its acts or omissions would cause harm to the plaintiff in the specific facts and circumstances of the claim.

9. COMPARATIVE FAULT. In an action or proceeding against a financial institution, public utility, or other person



alleging actual damages arising by reason of a year 2000 problem, the apportionment, if any, of such damages shall be made pursuant to chapter 668. For purposes of a claim arising by reason of a year 2000 problem, chapter 668 shall apply to articles 3 and 4 of chapter 554.

Sec. 2. NEW SECTION. 527A.2 LIMITATION ON ACTIONS AGAINST PERSONS FOR ELECTRONIC FAILURE ASSOCIATED WITH A YEAR 2000 PROBLEM.

1. A person who transacts business in this state on matters directly or indirectly affecting real or personal property, whether tangible or intangible, mortgages, credit accounts, banking and financial transactions, or property interests in this state shall not initiate or cause to be initiated a foreclosure proceeding, default, or other adverse action against another person due to a failure of payment or performance caused by a year 2000 problem.

2. A person shall not initiate or cause to be initiated an adverse enforcement action, whether based on contract or otherwise, against another person who is unable to cause payment, or to act or forbear, or to cause other financial transactions to occur in a timely manner due to a year 2000 problem.

3. The prohibitions in subsections 1 and 2 apply to transactions relating to and including, but not limited to, mortgages, contracts, landlord and tenant relations, consumer credit obligations, utilities, and banking.

4. An enforcement action otherwise prohibited under subsection 1 or 2, may be commenced at any time after sixty days following the date the payment was due or the act or omission was required to be performed.

5. This section does not affect transactions upon which a default occurred before any disruption of financial or data transfer operations attributable to a year 2000 problem.

6. This section does not eliminate, but only suspends, the ability to enforce obligations to which this section applies.

7. A person shall not report to a credit reporting agency operating in this state negative credit information resulting from a failure of payment or performance due to a year 2000 problem.

---

MARY E. KRAMER  
President of the Senate

---

RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 405, Seventy-eighth General Assembly.

---

MICHAEL E. MARSHALL  
Secretary of the Senate

*Vilsack*  
Approved April 26, 1999

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THOMAS J. VILSACK  
Governor