

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H3/11/99*

# A Bill

HOUSE BILL 2263

5 By: Representatives Wilkinson, Vess, Womack  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO PROVIDE FINANCIAL SERVICES ENTITIES AND  
10 GOVERNMENTAL ENTITIES LIMITED LIABILITY PROTECTION  
11 FROM CLAIMS BASED UPON YEAR 2000 COMPUTER FAILURES  
12 UPON EXERCISE OF DUE CARE."  
13

## Subtitle

14 "THE FINANCIAL SERVICES ENTITIES AND  
15 GOVERNMENTAL ENTITIES YEAR 2000  
16 LIABILITY PROTECTION ACT."  
17  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

### SECTION 1. Definitions.

22  
23 (1) "Financial Services Entity" means any of the following entities  
24 which are actively engaged in the delivery of financial services:

25 (A) Any bank, bank holding company, or any subsidiary or  
26 affiliate of a bank or bank holding company;

27 (B) Any trust company or any subsidiary thereof;

28 (C) Any savings and loan association, savings bank, thrift  
29 association or any subsidiary or affiliate thereof;

30 (D) Any insurance company or any subsidiary or affiliate thereof;

31 or

32 (E) Any securities brokerage firm which is registered with and  
33 subject to the jurisdiction of the Securities and Exchange Commission or any  
34 subsidiary thereof.

35 (2) "Government Entity" means the State of Arkansas or any agency,  
36 subdivision and instrumentality thereof, including but not limited to

1 counties, cities, towns, improvement districts, school districts.

2 (3) "Covered Year 2000 Action" means a civil action commenced in any  
3 court against a Financial Services Entity or a Government Entity for a cause  
4 of action arising out of a Year 2000 Failure but does include an action to  
5 recover damages for personal injury (excluding emotional harm) or wrongful  
6 death;

7 (4) "Year 2000 Failure" means a systems product failure caused by the  
8 inability of a computer system, program, or software's failure to accurately  
9 store, process, provide, or receive data containing any date after December  
10 31, 1999;

11 (5) of that person's information technology systems or processes that  
12 materially affects the person's capacity to perform its activities or deliver  
13 goods and services has a Year 2000 Failure.

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15 *SECTION 2. Applicability of act.*

16 (a) This act shall apply to any Covered Year 2000 Action commenced  
17 after the date of enactment of this act.

18 (b) This act shall not be construed to create any cause of action or  
19 remedy nor constitute any waiver of sovereign immunity which does not now  
20 exist under the laws of the State of Arkansas.

21 (c) This act does not apply to a civil action brought for personal  
22 injury to the extent that the action is based on a physical injury to the  
23 plaintiff.

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25 *SECTION 3. Limitations on Covered Year 2000 Actions.*

26 (a) Exclusive remedies: The remedies provided by this act are the  
27 exclusive remedies available to a plaintiff in a Covered Year 2000 Action,  
28 except for claims based upon either (1) a written agreement or other  
29 instrument in writing to which the plaintiff and the defendant are parties, or  
30 (2) a physical injury to the plaintiff.

31 (b) Required relationship. (1) A Covered Year 2000 Action may not be  
32 commenced against financial services entity unless the plaintiff is in direct  
33 privity of contract with such entity and the losses incurred by the plaintiff  
34 are directly related to a Year 2000 Failure affecting the performance under  
35 the contract.

36 (2) A Covered Year 2000 Action, otherwise permitted by law, may

1 not be commenced against a government entity unless the losses incurred by the  
2 plaintiff are directly related to a Year 2000 Failure which causes a direct  
3 and material economic loss to the plaintiff.

4 (c) Remediation opportunity. A Covered Year 2000 Action may not be  
5 commenced until the plaintiff has notified in writing all defendants,  
6 describing the Year 2000 Failure with particularity and the plaintiff has  
7 afforded the defendants a reasonable opportunity to remedy the Year 2000  
8 Failure. In no event shall a reasonable opportunity to remedy a Year 2000  
9 Failure consist of a period of less than thirty (30) days.

10 (d) Statute of limitations. No Covered Year 2000 Action shall be  
11 maintained against a financial services entity or a governmental entity unless  
12 commenced on or before January 1, 2001.

13  
14 SECTION 4. Damages.

15 (a) Economic loss. No damages awarded in a Covered Year 2000 Action  
16 shall exceed the lesser of (1) the actual economic losses of the plaintiff or  
17 (2) five hundred thousand dollars (\$500,000).

18 (b) Punitive damages. No punitive damages may be awarded in a Covered  
19 Year 2000 Action.

20 (c) Good faith limitation. Damages may not be awarded in a Covered  
21 Year 2000 Action against any financial services entity or government entity  
22 which demonstrates that such entity exercised due diligence and reasonable  
23 care to prevent or remedy the Year 2000 Failure according to generally  
24 accepted standards of care.

25 (d) Safe harbor. Any person who satisfies the requirements under  
26 either (1) or (2) below shall be deemed to have exercised due diligence and  
27 reasonable care in accordance with the generally accepted standards of care;

28 (1) Reasonable efforts have been undertaken to implement all of  
29 the following procedures which are applicable to such person;

30 (A) Prepare an inventory of systems and devices used by  
31 such person that may experience a Year 2000 Failure.

32 (B) Identify critical systems necessary to conduct such  
33 person's business or governmental operations.

34 (C) Identify the potential for Year 2000 Failures  
35 associated with systems and devices used in such person's business or  
36 governmental operations.

