

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 620

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rod Adair

AN ACT

ENACTING THE Y2K FINANCIAL PROTECTION ACT; PROVIDING FOR PROTECTION OF CONSUMERS WHEN COMPUTER DATE FAILURE IS THE CAUSE OF CERTAIN ACTIONS TAKEN OR NOT TAKEN BY PARTIES TO COMMERCIAL TRANSACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Y2K Financial Protection Act".

Section 2. DEFINITIONS--PROTECTION AGAINST ADVERSE ACTIONS WHEN CAUSED BY YEAR 2000 EVENT.--

A. As used in the Y2K Financial Protection Act:

(1) "adverse action" means a specific action taken by a person in connection with a commercial transaction that has a direct and negative impact upon another because it:

(a) shortens the length of time

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 available for performance;

2 (b) imposes additional interest or
3 penalties;

4 (c) declares a breach of or default in
5 an obligation;

6 (d) declares a forfeiture of or
7 forfeits something of value, tangible or intangible; or

8 (e) causes a negative entry to be made
9 in a credit record; and

10 (2) "year 2000 event" means an occurrence
11 resulting from a year 2000 date failure or failure or
12 malfunction of computer hardware, computer software,
13 microchip-controlled firmware or other equipment affected by
14 the failure or malfunction.

15 B. No adverse action shall be taken by a person as
16 a result of a year 2000 event.

17 C. Adverse action taken by a person in violation
18 of Subsection B of this section subjects the violator to a
19 civil action in district court by the person against whom the
20 adverse action was taken and if the court finds based upon
21 clear and convincing evidence that the violation occurred, it
22 shall award treble damages, costs and reasonable attorney fees
23 to the plaintiff in the action.

1 FORTY-FOURTH LEGISLATURE

SB 620/a

2 FIRST SESSION, 1999

3
4
5 February 27, 1999

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred

11
12 SENATE BILL 620

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16
17 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE
18 SUBSTITUTE FOR SENATE BILL 620

19
20 DO PASS, amended as follows:

21
22 1. On page 4, line 14, strike "shall" and insert in lieu
23 thereof "may".
24

25
. 127465. 2

underscored material = new
[bracketed material] = delete

2. On page 4, line 14, strike "treble"..

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Respectfully submitted,

Roman M. Maes, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Aragon, Kysar, McKibben, Robinson

Absent: None

S0620CT1

underscored material = new
[bracketed material] = delete

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 620

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

ENACTING THE Y2K FINANCIAL PROTECTION ACT; PROVIDING FOR
PROTECTION OF CONSUMERS WHEN COMPUTER DATE FAILURE IS THE
CAUSE OF CERTAIN ACTIONS TAKEN OR NOT TAKEN BY PARTIES TO
COMMERCIAL TRANSACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Y2K Financial Protection Act".

Section 2. DEFINITIONS.--As used in the Y2K Financial
Protection Act:

A. "adverse action" means a specific action taken by
a person in connection with a mortgage, a contract, landlord-
tenant relations, a consumer credit obligation, a utility
bill, a banking transaction or any other commercial
transaction that has a direct and negative impact upon another

1 because it:

2 (1) shortens the length of time available for
3 performance;

4 (2) imposes additional interest or penalties;

5 (3) declares a breach of or default in an
6 obligation;

7 (4) declares a forfeiture of or forfeits
8 something of value, tangible or intangible; or

9 (5) causes a negative entry to be made in a
10 credit record; and

11 B. "year 2000 event" means an improper or incorrect
12 transmission, an inability to cause a transaction to occur, a
13 failure or inability to act in a timely manner, a failure or
14 inability to accurately or timely process any information or
15 data, payment or transfer or any other occurrence directly or
16 indirectly resulting from the failure or malfunction of any
17 computer processor to accurately or properly recognize,
18 calculate, display, sort or otherwise process dates or times
19 because of the beginning of the year 2000.

20 Section 3. ADVERSE ACTION--PROCEDURE TO MITIGATE
21 EFFECTS--CAUSE OF ACTION. --

22 A. A person who has been harmed by an adverse action
23 that he believes may have resulted from a year 2000 event may,
24 within thirty days of the latter of having actual knowledge of
25 the adverse action or having actual knowledge of a year 2000

1 event that may have caused the adverse action to be taken,
2 file a protest in writing with the person who took the adverse
3 action. The protest shall be accompanied by any documentation
4 or other evidence that may show that the adverse action
5 resulted from a year 2000 event.

6 B. Within ten days of receiving a protest pursuant
7 to Subsection A of this section, the person who took adverse
8 action shall investigate the matter and:

9 (1) if the person concludes that the adverse
10 action was taken because of a year 2000 event, the person
11 shall revoke the adverse action and notify the protestor of
12 the revocation;

13 (2) if the person concludes that the adverse
14 action was not taken because of a year 2000 event, the person
15 shall so notify the protestor; or

16 (3) offer to mediate the matter with the
17 protestor.

18 C. A protestor who has followed the procedures
19 established by Subsections A and B of this section may bring a
20 civil action in district court against the person who took the
21 adverse action if:

22 (1) the person did not respond to the protestor
23 within the time frame required by Subsection B of this
24 section;

25 (2) the protestor received a notice pursuant to

. 128342. 2

underscored material = new
[bracketed material] = delete

1 Paragraph (2) of Subsection B of this section; or

2 (3) the matter has not been resolved within
3 thirty days after the commencement of mediation procedures
4 pursuant to Paragraph (3) of Subsection B of this section.

5 D. In an action brought pursuant to Subsection C of
6 this section, if the court finds that, based upon a
7 preponderance of evidence, the adverse action was taken as a
8 result of a year 2000 event and that the defendant knew or
9 should have known, by the evidence in the defendant's
10 possession and the evidence submitted by the plaintiff
11 pursuant to Subsection A of this section, that the adverse
12 action was taken as a result of a year 2000 event, then the
13 court shall award treble damages, costs and reasonable
14 attorney fees to the plaintiff.

15 E. The procedures and remedies of this section are
16 in addition to any others that may be provided for by law.

17 Section 4. DELAYED REPEAL. --The provisions of this act
18 are repealed effective January 1, 2007.