

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 316 Session of
1999

INTRODUCED BY GERLACH, MOWERY AND KASUNIC, FEBRUARY 3, 1999

REFERRED TO COMMUNICATIONS AND HIGH TECHNOLOGY, FEBRUARY 3, 1999

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for damages
3 resulting from computer data failure; and further providing
4 for exceptions to sovereign immunity and for exceptions to
5 governmental immunity.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 42 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 8313. Damages in actions for computer data failure.

11 (a) Direct damages recoverable.--Notwithstanding any other
12 provision of law, in an action to recover damages based upon an
13 alleged failure by a computer software consultant properly to
14 detect, disclose, prevent or remediate a computer data failure,
15 the plaintiff may recover direct damages, including:

16 (1) damages resulting from bodily injury to the
17 plaintiff or physical damage to the plaintiff's property
18 proximately caused by the defendant's conduct; and

19 (2) any costs reasonably incurred to reprogram or

1 replace and test the relevant computer system, computer
2 program or software or internal hardware timer.

3 (b) Other damages.--In an action to which subsection (a)
4 applies and subject to subsection (d), there shall be no
5 recovery for consequential, indirect or incidental damages,
6 including, but not limited to, business interruption losses,
7 lost profits or losses alleged to have resulted from the
8 plaintiff's inability to perform his contractual obligations to
9 third parties, provided that nothing in this subsection shall
10 limit recovery of consequential damages for bodily injury
11 proximately caused by the defendant's conduct.

12 (c) Contractual rights.--Nothing in this section shall be
13 construed to limit the ability of contracting parties to enter
14 into agreements as they deem appropriate with regard to
15 liability and damages.

16 (d) Scope.--Nothing in this section shall limit recovery of
17 consequential, indirect or incidental damages if the plaintiff
18 proves fraud, including fraudulent misrepresentation,
19 intentional harm or gross negligence. Nothing in this section
20 shall be construed to create or give rise to a cause of action
21 not otherwise existing under law.

22 (e) Definitions.--As used in this section, the following
23 words and phrases shall have the meanings given to them in this
24 subsection:

25 "Computer date failure." Either of the following:

26 (1) A present or future inability of a computer system,
27 computer program or software, or internal hardware timer, to
28 properly handle dates of calendar year 1999 or subsequent
29 years.

30 (2) An incompatibility between:

1 (i) the computer system, computer program or
2 software, or internal hardware timer; and
3 (ii) any other system, program, software, internal
4 hardware timer, or electronic data in any form, with
5 respect to the handling of dates of calendar year 1999 or
6 subsequent years.

7 "Computer program or software." A set of statements or
8 instructions to be used directly or indirectly in a computer in
9 order to bring about a certain result.

10 "Computer software consultant." A person who creates,
11 repairs or modifies computer programs or software for others.
12 The term includes a person who engages, subcontracts with or
13 employs others to perform such services. The term shall not
14 include a person who manufactures computer programs or software
15 for sale to the general public.

16 "Computer system." Any electronic device or collection of
17 devices, including support devices, networks and embedded chips,
18 that contains computer programs, electronic instructions, input
19 data and output data, and that performs functions, including,
20 but not limited to, logic, arithmetic, data storage and
21 retrieval, communication and control. The term shall not include
22 calculators that are not programmable.

23 "Creates, repairs or modifies." Any creation or alteration
24 of the design, source code or other components contained within
25 or constituting a computer program. The term includes any such
26 services provided under a contract for computer goods and
27 services.

28 Section 2. Section 8522 and 8542 of Title 42 are amended by
29 adding subsections to read:

30 § 8522. Exceptions to sovereign immunity.

1 * * *

2 (c) Computer date failures.--Nothing in this section shall
3 create or allow an exception to sovereign immunity, and there
4 shall be no liability imposed upon a Commonwealth party for
5 damages arising out of a negligent act which causes or fails to
6 prevent a computer date failure as defined in section 8313
7 (relating to damages in actions for computer date failure).

8 § 8542. Exceptions to governmental immunity.

9 * * *

10 (e) Computer date failures.--Nothing in this section shall
11 create or allow an exception to governmental immunity, and there
12 shall be no liability imposed upon a local agency for damages
13 arising out of a negligent act which causes or fails to prevent
14 a computer date failure as defined in section 8313 (relating to
15 damages in actions for computer date failure).

16 Section 3. This act shall take effect immediately.