



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

LIMIT LIABILITY FOR YEAR 2000 COMPUTER PROBLEMS

House Bill 4424 (Substitute H-2) First Analysis (10-13-99)

Sponsor: Rep. Janet Kukuk
Committee: Family and Civil Law

THE APPARENT PROBLEM:

The “Y2K Problem” and the “Millennium Bug” are both expressions that cover a large complex of problems associated with the fact that computer systems record the year with two numbers rather than with four numbers. Thus, computers and many electronic products would indicate the current year as “99” and not “1999”. The fear is that when the year changes from 1999 to 2000, computers and computer-dependent systems will malfunction or even “crash”. This could affect modern equipment from the minor (VCR programming) to the cosmic (the old Cold War hotlines between the United States and the former Soviet Union), and just about everything in between. People are concerned about the functioning of public utilities, banks, telecommunications, alarm systems, large government payment systems, police and other public safety services, heating and air conditioning, elevators, drug manufacturing, hospital operations and medical equipment, and a wide variety of business and manufacturing operations. (On the other hand, while accepting that the problem is real, some skeptics have suggested the main problems associated with Y2K could be caused by alarmism and overreaction.) Many public and private organizations have been diligently expending a large amount of money and energy and being prepared for the coming of the year 2000 in order to minimize disruptions in everyday life. An additional concern is the fear of a “litigation explosion” as a result of Y2K-related problems. The federal and state governments have been examining ways of containing such lawsuits. One method is to provide a certain amount of immunity to private and public entities.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to limit the liability of defendants in actions brought for damages resulting from a computer date failure. A computer date failure would be defined as a malfunction of an electronic or mechanical device or the inability of a computer, a computer network, computer program, computer software, embedded chip,

or a computer system to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times in the years 1999 and 2000 and beyond. The bill’s provisions would apply to actions for damages alleged to have resulted, directly or indirectly, from a computer date failure if the defendant had made a substantial, good faith effort to make and implement a year 2000 readiness plan (a plan that was reasonably calculated to avoid material disruption of the defendant’s operations due to a computer date failure of something under the defendant’s control). If a defendant was regulated by state or federal government, compliance with the regulator’s requirements to address readiness for computer date failures would be considered sufficient evidence of substantial good faith effort to make and implement a year 2000 readiness plan.

Liability would be limited in two ways. First, the bill would limit the grounds for which potential defendants could be liable. Under the bill, a potential defendant would only be liable for a computer date failure where the claimant had a contract with the defendant, the defendant had extended a warranty to the claimant, and/or the claimant was a beneficiary to a trust that was administered by defendant. In addition, liability for delay or interruption in the performance of an agreement, including but not limited to the delivery of goods or services, would be restricted where the delay was due to computer failure attributable, either directly or indirectly, to the acts or omissions of a third party. Finally, an employee, officer, director, shareholder, limited partner, member, or manager of a person would not be liable for damages or other relief relating to a computer date failure, if he or she were acting in his or her capacity as employee, officer, director, etc.

Secondly, liability would be limited by restricting any liability for a computer date failure to actual damages as defined in the bill. Actual damages would mean direct economic losses proximately caused by a computer date failure. This would include fees,

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interest, or penalties charged by a third party if those amounts resulted from a computer date failure that was attributable to the defendant. Actual damages would not include other indirect, special, or incidental damages, or exemplary or noneconomic damages.

The bill's provisions would apply to every action to recover damages, except those alleging wrongful death, personal injury, or damage to tangible property, that resulted directly or indirectly from an alleged computer date failure that had not been fully and finally adjudicated as of the bill's effective date.

The bill would not create a new cause of action or remedy for computer date failure and would be repealed on January 1, 2003.

MCL 600.2969

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (10-13-99)

ARGUMENTS:

For:

The bill will help to prevent frivolous litigation based upon computer date failures. Businesses and individuals who have complied with state and federal requirements should be protected from lawsuits, particularly where the problems were the responsibility of a third party or where the defendant did not have a fiduciary relationship with the would-be claimant.

While the bill doesn't grant absolute immunity from lawsuits it does provide protection for those who met federal and state requirements. Even so, a person who makes a warranty, is in privity of contract, or administers a trust, could still be liable for damages to someone directly affected by that person's actions. The bill also will have the positive affect of limiting the types of damages for which a defendant could be held liable.

Against:

Although the bill will serve to protect businesses and other entities from ending up as defendants in Y2K lawsuits, it also will prevent those businesses from being plaintiffs. While it could be argued that most people are more concerned about being sued than being

able to sue, that only lasts until they have been harmed by someone else's actions. It is likely that a number of

people who now support this legislation will change their minds after December 31st when they find out that the shoe is on the other foot.

As with all grants of immunity from liability the bill runs the risk that its protections could lead some to refrain from continuing to expend money in an effort to correct potential problems before they arise. It is often the threat of lawsuits that encourages businesses to act to protect their customers when the costs of doing so might otherwise go against the businesses' bottom line. By eliminating this threat, the bill could lead to an increased number of "Y2K" problems.

Another potential problem with the legislation stems from its definition, or lack thereof, of what would be a substantial, good faith effort to implement a year 2000 readiness plan. Although the bill specifies that compliance with the requirements of state or federal regulators would be sufficient evidence of such an effort, the bill does not take into account that not every regulatory agency has established requirements to address computer date failures. Therefore, it is likely that in a number of situations, the meaning of the phrase "substantial, good faith compliance" would have to be determined in court.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (10-12-99)

The Michigan Manufacturers Association supports the bill. (10-12-99)

The Michigan Consumer Federation opposes the bill. (10-12-99)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.