

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4424 (Substitute H-2 as passed by the House)  
Sponsor: Representative Janet Kukuk  
House Committee: Family and Civil Law  
Senate Committee: Technology and Energy

Date Completed: 12-1-99

### **CONTENT**

**The bill would amend the Revised Judicature Act to limit the liability of a person for damages relating to a computer date failure. The bill would apply to actions against a person who had made a substantial, good faith effort to implement a "year 2000 readiness plan". The bill would be repealed effective January 1, 2003.**

The bill would define "computer date failure" as a malfunction, including the malfunction of an electronic or mechanical device or the inability of a computer, computer network, computer program, embedded chip, computer system, or computer software to store, process, receive, or transmit data accurately, that was caused directly or indirectly by the failure of a computer, computer network, computer program, embedded chip, a computer system, or computer software accurately or properly to recognize, calculate, display, sort, or otherwise process dates or times in the years 1999 and 2000, and beyond.

A person would not be liable to a claimant for damages or other relief relating to a computer date failure unless one or more of the following were met:

- The person had extended a warranty to the claimant.
- The claimant was the beneficiary of a trust administered by the person.
- The claimant was in privity of contract with the person. ("Privity of contract" refers to the relationship that exists between two or more contracting parties.)

("Claimant" would mean a person seeking to recover damages resulting directly or indirectly from an alleged computer date failure in a civil action.)

A person would not be liable to a claimant for damages or other relief for a delay or interruption in the performance of an agreement by the person, including the delivery of goods or services by the person, that was the result of or connected with one or both of the following:

- The person's computer date failure, to the extent the computer date failure was caused by or attributable to the acts or omissions of a third party.
- A third party's computer date failure.

An employee, officer, director, shareholder, limited partner, member, or manager of a person, if acting in that capacity, would not be liable to a claimant for damages or other relief relating to a computer date failure.

The liability of a person who experienced a computer date failure would be limited to a claimant's actual damages. ("Actual damages" would mean direct economic losses proximately caused by a computer date failure. Actual damages could include fees, interest, or penalties charged to a claimant by a third party if the fees, interest, or penalties resulted from a computer date failure attributable to the defendant. Actual damages would not include other indirect, special, or incidental damages, or exemplary or noneconomic damages.)

The bill would not apply to an action to recover damages for a wrongful death or an injury to a person resulting directly or indirectly from a computer date failure. Otherwise, the bill would govern every action against a person or an employee, officer, director, shareholder, limited partner, member, or manager of a person to recover damages resulting directly or indirectly from an alleged computer date failure if the person had made a substantial, good faith effort to make and implement a year 2000 readiness plan. ("Year 2000 readiness plan" would mean a plan under which a person took action that was reasonably calculated to avoid material disruption of its operations as a result of a computer date failure of a computer, computer network, computer program, computer software, embedded chip, or computer system under the person's control.) In determining a substantial, good faith effort of a person regulated by a state or the Federal government, compliance with the requirements of the person's primary state or Federal regulator to address readiness for computer date failures would be prima facie evidence of a substantial, good faith effort to make and implement a year 2000 readiness plan. (Prima facie evidence is evidence that is sufficient to establish a given fact unless it is rebutted.)

The bill would apply to all legal and equitable actions relating to a computer date failure that had not been fully and finally adjudicated as of the bill's effective date.

The bill specifies that it would not create a new cause of action or remedy for computer date failure.

Proposed MCL 600.2970

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman