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**SFA****BILL ANALYSIS**

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House Bill 4737 (Substitute H-3 as passed by the House)  
Sponsor: Representative Andrew Richner  
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 financial institution for damages relating to a computer date failure. The bill would apply to actions against a financial institution that had made a good faith effort to implement a “year 2000 readiness plan”. The bill also would limit the ability of a person to foreclose on a residential mortgage due to an inaccurate or late payment caused by a computer date failure. The bill would be repealed on January 1, 2003.**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.

### **Financial Institutions**

A financial institution and its employees, officers, and directors would not be liable to a person not in privity of contract with the financial institution for damages or other relief relating to a computer date failure. (Privity of contract refers to the relationship between two or more contracting parties.) The liability of a financial institution that experienced a computer date failure would be limited to 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 person in privity of contract with a financial institution, either by a third party if the fees, interest, or penalties resulted from a computer date failure attributable to the financial institution, or by the financial institution. Actual damages would not include other indirect, special, or incidental damages, or exemplary or noneconomic damages. Actual damages would be limited by a written contract between the parties unless one of the parties was an individual or the contract was valued at less than \$100,000.)

The bill would not apply to an action to recover damages for a wrongful death or injury to a person resulting directly or indirectly from a computer date failure. Otherwise, the bill would govern every action against a financial institution or an employee, officer, or director of a financial institution to recover damages resulting directly or indirectly from an alleged computer failure, if the financial institution had made a good faith effort to make and implement a year 2000 readiness plan. A financial institution that had substantially complied with the requirements of its primary state or Federal regulator to address readiness for computer date failures would be presumed to have made a good faith effort to make and implement a year 2000 readiness plan. (“Year 2000 readiness plan” would mean a plan under which a financial institution 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 financial institution’s control.)

The bill would require a court to reduce the amount of damages recoverable in an action subject to the bill in proportion to the amount of a contributing act or omission that was attributable to a third party engaged by a financial institution to make and implement all or part of its year 2000 readiness plan and in proportion to the

amount of responsibility of the person seeking damages under the bill.

### Residential Mortgages

A person that transacted business on matters directly or indirectly affecting residential mortgages could not cause or permit a foreclosure on a residential mortgage against an individual if the basis for the foreclosure were an inaccurate or late payment on the mortgage that was caused by a computer date failure. Within seven business days after an individual learned of the computer date failure that caused his or her inaccurate or late payment, the individual would have to notify his or her mortgage servicer of the computer date failure, and give the servicer available documentation relating to it.

These provisions would not apply unless the seven-business-day notice were strictly complied with and the notice were given before March 15, 2000. These provisions also would not apply to a residential mortgage payment upon which default occurred, or with respect to which imminent default was foreseeable, before December 15, 1999.

The bill states that it would delay, but not prohibit, the enforcement of financial obligations, and would not otherwise effect or extinguish obligations under a residential mortgage. If an individual's mortgage payment were not made and the mortgage's servicer did not grant an expressly written time extension for the payment, a prohibited act to foreclose the mortgage could be initiated or resumed, but not before January 29, 2000, or 28 days after the servicer requested the notice required by the bill, whichever was later.

### Other Provisions

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.

An action subject to the bill would be barred if not commenced before January 1, 2001.

Proposed MCL 600.2969

Legislative Analyst: S. Lowe

### **FISCAL IMPACT**

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

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.