

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4424**

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9948) by adding section 2970; and to repeal
acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2970. (1) AS USED IN THIS SECTION:

2 (A) "ACTUAL DAMAGES" MEANS DIRECT ECONOMIC LOSSES PROMI-
3 MATELY CAUSED BY A COMPUTER DATE FAILURE. ACTUAL DAMAGES MAY
4 INCLUDE FEES, INTEREST, OR PENALTIES CHARGED TO A CLAIMANT BY A
5 THIRD PARTY IF SUCH FEES, INTEREST, OR PENALTIES RESULT FROM A
6 COMPUTER DATE FAILURE ATTRIBUTABLE TO THE DEFENDANT. ACTUAL DAM-
7 AGES DO NOT INCLUDE OTHER INDIRECT, SPECIAL, OR INCIDENTAL DAM-
8 AGES, OR EXEMPLARY OR NONECONOMIC DAMAGES.

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1 (B) "CLAIMANT" MEANS A PERSON SEEKING TO RECOVER DAMAGES
2 RESULTING DIRECTLY OR INDIRECTLY FROM AN ALLEGED COMPUTER DATE
3 FAILURE IN A CIVIL ACTION.

4 (C) "COMPUTER" MEANS A HIGH-SPEED DATA PROCESSING DEVICE
5 THAT PERFORMS LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS BY THE
6 MANIPULATIONS OF ELECTRONIC OR MAGNETIC IMPULSES AND INCLUDES ALL
7 INPUT, OUTPUT, PROCESSING, STORAGE, OR COMMUNICATION FACILITIES
8 THAT ARE CONNECTED OR RELATED TO THE DEVICE.

9 (D) "COMPUTER DATE FAILURE" MEANS A MALFUNCTION, INCLUDING,
10 BUT NOT LIMITED TO, THE MALFUNCTION OF AN ELECTRONIC OR MECHANI-
11 CAL DEVICE OR THE INABILITY OF A COMPUTER, A COMPUTER NETWORK, A
12 COMPUTER PROGRAM, COMPUTER SOFTWARE, AN EMBEDDED CHIP, OR A COM-
13 PUTER SYSTEM TO ACCURATELY STORE, PROCESS, RECEIVE, OR TRANSMIT
14 DATA, THAT IS CAUSED DIRECTLY OR INDIRECTLY BY THE FAILURE OF A
15 COMPUTER, A COMPUTER NETWORK, A COMPUTER PROGRAM, COMPUTER SOFT-
16 WARE, AN EMBEDDED CHIP, OR A COMPUTER SYSTEM TO ACCURATELY OR
17 PROPERLY RECOGNIZE, CALCULATE, DISPLAY, SORT, OR OTHERWISE PRO-
18 CESS DATES OR TIMES IN THE YEARS 1999 AND 2000, AND BEYOND.

19 (E) "COMPUTER NETWORK" MEANS AN INTERCONNECTION OF 2 OR MORE
20 COMPUTERS OR COMPUTER SYSTEMS BY SATELLITE, MICROWAVE, LINE,
21 CABLE, WIRING, OR OTHER COMMUNICATION MEDIUM WITH THE CAPABILITY
22 TO TRANSMIT INFORMATION AMONG THE COMPUTERS OR COMPUTER SYSTEMS.

23 (F) "COMPUTER PROGRAM" MEANS AN ORDERED SET OF DATA-CODED
24 INSTRUCTIONS OR STATEMENTS THAT WHEN EXECUTED BY A COMPUTER CAUSE
25 THE COMPUTER SYSTEM TO PROCESS DATA OR PERFORM SPECIFIC
26 FUNCTIONS.

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1 (G) "COMPUTER SOFTWARE" MEANS A SET OF COMPUTER PROGRAMS,
2 PROCEDURES, AND ASSOCIATED DOCUMENTATION RELATED TO THE OPERATION
3 OF A COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

4 (H) "COMPUTER SYSTEM" MEANS A COMBINATION OF A COMPUTER OR A
5 COMPUTER NETWORK WITH THE DOCUMENTATION, COMPUTER SOFTWARE, OR
6 PHYSICAL FACILITIES SUPPORTING THE COMPUTER OR COMPUTER NETWORK.

7 (I) "EMBEDDED CHIP" MEANS A SINGLE OR MULTIPLE MICROPROCES-
8 SOR CHIP THAT OPERATES IN CONJUNCTION WITH SOFTWARE, INCLUDING
9 SOFTWARE ON THE CHIP ITSELF, THAT IN SOME WAY CONTROLS A DEVICE
10 OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, A COMPUTER OR OTHER
11 ELECTRONIC OR MECHANICAL DEVICE.

12 (J) "NONECONOMIC DAMAGES" MEANS PAIN, SUFFERING, INCONVE-
13 NIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, MENTAL ANGUISH, EMO-
14 TIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CON-
15 SORTIUM, INJURY TO REPUTATION, HUMILIATION, OR OTHER NONPECUNIARY
16 DAMAGES CAUSED BY A COMPUTER DATE FAILURE.

17 (K) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,
18 ASSOCIATION, LIMITED LIABILITY COMPANY, TRUST, OR OTHER LEGAL
19 ENTITY, EXCEPT A FINANCIAL INSTITUTION AS DEFINED IN SECTION
20 2969.

21 (L) "YEAR 2000 READINESS PLAN" MEANS A PLAN PURSUANT TO
22 WHICH A PERSON TAKES ACTION THAT IS REASONABLY CALCULATED TO
23 AVOID MATERIAL DISRUPTION OF ITS OPERATIONS AS A RESULT OF A COM-
24 PUTER DATE FAILURE OF A COMPUTER, COMPUTER NETWORK, COMPUTER PRO-
25 GRAM, COMPUTER SOFTWARE, EMBEDDED CHIP, OR COMPUTER SYSTEM UNDER
26 THE CONTROL OF THE PERSON.

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1 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THIS SECTION
2 GOVERNS EVERY ACTION AGAINST A PERSON OR AN EMPLOYEE, OFFICER,
3 DIRECTOR, SHAREHOLDER, LIMITED PARTNER, MEMBER, OR MANAGER OF A
4 PERSON TO RECOVER DAMAGES RESULTING DIRECTLY OR INDIRECTLY FROM
5 AN ALLEGED COMPUTER DATE FAILURE IF THE PERSON HAS MADE A SUB-
6 STANTIAL, GOOD FAITH EFFORT TO MAKE AND IMPLEMENT A YEAR 2000
7 READINESS PLAN. IN DETERMINING A SUBSTANTIAL, GOOD FAITH EFFORT
8 OF A PERSON REGULATED BY A STATE OR THE FEDERAL GOVERNMENT, COM-
9 PLIANCE WITH THE REQUIREMENTS OF THE PERSON'S PRIMARY STATE OR
10 FEDERAL REGULATOR TO ADDRESS READINESS FOR COMPUTER DATE FAILURES
11 IS PRIMA FACIE EVIDENCE OF A SUBSTANTIAL, GOOD FAITH EFFORT TO
12 MAKE AND IMPLEMENT A YEAR 2000 READINESS PLAN.

13 (3) THIS SECTION DOES NOT APPLY TO AN ACTION TO RECOVER DAM-
14 AGES FOR A WRONGFUL DEATH OR AN INJURY TO A PERSON RESULTING
15 FROM A COMPUTER DATE FAILURE.

16 (4) A PERSON IS NOT LIABLE TO A CLAIMANT FOR DAMAGES OR
17 OTHER RELIEF RELATING TO A COMPUTER DATE FAILURE UNLESS 1 OR MORE
18 OF THE FOLLOWING ARE MET:

19 (A) THE CLAIMANT IS IN PRIVACY OF CONTRACT WITH THE PERSON.

20 (B) THE PERSON HAS EXTENDED A WARRANTY TO THE CLAIMANT.

21 (C) THE CLAIMANT IS THE BENEFICIARY OF A TRUST ADMINISTERED
22 BY THE PERSON.

23 (5) A PERSON IS NOT LIABLE TO A CLAIMANT FOR DAMAGES OR
24 OTHER RELIEF FOR A DELAY OR INTERRUPTION IN THE PERFORMANCE OF AN
25 AGREEMENT BY THE PERSON, INCLUDING, BUT NOT LIMITED TO, THE
26 DELIVERY OF GOODS OR SERVICES BY THE PERSON, THAT IS THE RESULT
27 OF OR CONNECTED WITH 1 OR MORE OF THE FOLLOWING:

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1 (A) THE PERSON'S COMPUTER DATE FAILURE, TO THE EXTENT THE
2 COMPUTER DATE FAILURE IS CAUSED BY OR ATTRIBUTABLE TO THE ACTS OR
3 OMISSIONS OF A THIRD PARTY.

4 (B) A THIRD PARTY'S COMPUTER DATE FAILURE.

5 (6) AN EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, LIMITED
6 PARTNER, MEMBER, OR MANAGER OF A PERSON, IF ACTING IN THAT CAPAC-
7 ITY, IS NOT LIABLE TO A CLAIMANT FOR DAMAGES OR OTHER RELIEF
8 RELATING TO A COMPUTER DATE FAILURE.

9 (7) THE LIABILITY OF A PERSON THAT EXPERIENCES A COMPUTER
10 DATE FAILURE IS LIMITED TO A CLAIMANT'S ACTUAL DAMAGES.

11 (8) THIS SECTION APPLIES TO ALL LEGAL AND EQUITABLE ACTIONS
12 RELATING TO A COMPUTER DATE FAILURE THAT HAVE NOT BEEN FULLY AND
13 FINALLY ADJUDICATED AS OF THE EFFECTIVE DATE OF THIS SECTION.

14 (9) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION OR
15 REMEDY FOR COMPUTER DATE FAILURE.

16 (10) THIS SECTION IS REPEALED EFFECTIVE JANUARY 1, 2003.