

Act No. 240
Public Acts of 1999
Approved by the Governor
December 28, 1999
Filed with the Secretary of State
December 28, 1999
EFFECTIVE DATE: December 28, 1999

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Rep. Kukuk

ENROLLED HOUSE BILL No. 4424

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," (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:

Sec. 2970. (1) As used in this section:

(a) "Actual damages" means direct economic losses proximately caused by a computer date failure. Actual damages may include fees, interest, or penalties charged to a claimant by a third party if such fees, interest, or penalties result from a computer date failure attributable to the defendant. Actual damages do not include other indirect, special, or incidental damages, or exemplary or noneconomic damages.

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

(c) "Computer" means a high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(d) "Computer date failure" means a malfunction, including, but not limited to, the malfunction of an electronic or mechanical device or the inability of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately store, process, receive, or transmit data, that is caused directly or indirectly by the failure of a computer, a computer network, a computer program, computer software, an 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.

(e) "Computer network" means an interconnection of 2 or more computers or computer systems by satellite, microwave, line, cable, wiring, or other communication medium with the capability to transmit information among the computers or computer systems.

(f) "Computer program" means an ordered set of data-coded instructions or statements that when executed by a computer cause the computer system to process data or perform specific functions.

(g) "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(h) "Computer system" means a combination of a computer or a computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(i) "Embedded chip" means a single or multiple microprocessor chip that operates in conjunction with software, including software on the chip itself, that in some way controls a device or equipment, including, but not limited to, a computer or other electronic or mechanical device.

(j) "Noneconomic damages" means pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, or other nonpecuniary damages caused by a computer date failure.

(k) "Person" means an individual, corporation, partnership, association, limited liability company, trust, or other legal entity, except a financial institution as defined in section 2969.

(l) "Year 2000 readiness plan" means a plan pursuant to which a person takes action that is 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 control of the person.

(2) Except as provided in subsection (3), this section governs 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 has made a substantial, good faith effort to make and implement a year 2000 readiness plan. 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 is prima facie evidence of a substantial, good faith effort to make and implement a year 2000 readiness plan.

(3) This section does not apply to an action to recover damages for a wrongful death or an injury to a person resulting from a computer date failure.

(4) A person is not liable to a claimant for damages or other relief relating to a computer date failure unless 1 or more of the following are met:

- (a) The claimant is in privity of contract with the person.
- (b) The person has extended a warranty to the claimant.
- (c) The claimant is the beneficiary of a trust administered by the person.

(5) A person is not liable to a claimant for damages or other relief for a delay or interruption in the performance of an agreement by the person, including, but not limited to, the delivery of goods or services by the person, that is the result of or connected with 1 or more of the following:

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

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

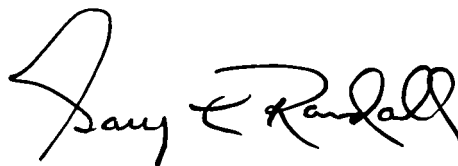
(7) The liability of a person that experiences a computer date failure is limited to a claimant's actual damages.

(8) This section applies to all legal and equitable actions relating to a computer date failure that have not been fully and finally adjudicated as of the effective date of this section.

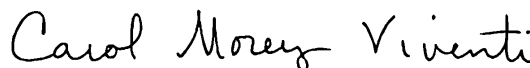
(9) This section does not create a new cause of action or remedy for computer date failure.

(10) This section is repealed effective January 1, 2003.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.