

# HOUSE BILL No. 4737

May 27, 1999, Introduced by Reps. Richner, Law, Koetje, Shulman, Hart and Voorhees and referred to the Committee on Family and Civil Law.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
(MCL 600.101 to 600.9948) by adding section 2969.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 2969. (1) AS USED IN THIS SECTION:

2        (A) "ACTUAL DAMAGES" MEANS DIRECT MONETARY LOSSES PROXI-  
3 MATELY CAUSED BY A COMPUTER DATE FAILURE. ACTUAL DAMAGES DO NOT  
4 INCLUDE LOST PROFITS, LOST REVENUE, OR OTHER INDIRECT, SPECIAL,  
5 CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR NONECONOMIC OR EXEMPLARY  
6 DAMAGES.

7        (B) "AFFILIATE" MEANS A PERSON THAT IS IN CONTROL OF, IS  
8 UNDER THE CONTROL OF, OR IS UNDER COMMON CONTROL WITH ANOTHER  
9 PERSON.

10       (C) "COMPUTER" MEANS A HIGH-SPEED DATA PROCESSING DEVICE  
11 THAT PERFORMS LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS BY THE

1 MANIPULATIONS OF ELECTRONIC OR MAGNETIC IMPULSES AND INCLUDES ALL  
2 INPUT, OUTPUT, PROCESSING, STORAGE, OR COMMUNICATION FACILITIES  
3 THAT ARE CONNECTED OR RELATED TO THE DEVICE.

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

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

18 (F) "COMPUTER PROGRAM" MEANS AN ORDERED SET OF DATA-CODED  
19 INSTRUCTIONS OR STATEMENTS THAT WHEN EXECUTED BY A COMPUTER CAUSE  
20 THE COMPUTER SYSTEM TO PROCESS DATA OR PERFORM SPECIFIC  
21 FUNCTIONS.

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

25 (H) "COMPUTER SYSTEM" MEANS A COMBINATION OF A COMPUTER OR A  
26 COMPUTER NETWORK WITH THE DOCUMENTATION, COMPUTER SOFTWARE, OR  
27 PHYSICAL FACILITIES SUPPORTING THE COMPUTER OR COMPUTER NETWORK.

1 (I) "CONTROL" MEANS POSSESSION OF THE AUTHORITY, DIRECTLY OR  
2 INDIRECTLY, TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT OR  
3 POLICIES OF A PERSON.

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

9 (K) "FINANCIAL INSTITUTION" MEANS AN INSURED DEPOSITORY  
10 INSTITUTION AS DEFINED IN 12 U.S.C. 1813(c)(2), A CREDIT UNION,  
11 AND AN AFFILIATE OF A CREDIT UNION OR INSURED DEPOSITORY  
12 INSTITUTION.

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

18 (M) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,  
19 ASSOCIATION, LIMITED LIABILITY COMPANY, TRUST, OR OTHER LEGAL  
20 ENTITY.

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

1           (2) THIS SECTION GOVERNS EVERY ACTION AGAINST A FINANCIAL  
2 INSTITUTION OR AN EMPLOYEE, OFFICER, OR DIRECTOR OF A FINANCIAL  
3 INSTITUTION TO RECOVER DAMAGES RESULTING DIRECTLY OR INDIRECTLY  
4 FROM AN ALLEGED COMPUTER DATE FAILURE IF THE FINANCIAL INSTITU-  
5 TION HAS MADE A GOOD FAITH EFFORT TO MAKE AND IMPLEMENT A YEAR  
6 2000 READINESS PLAN. A FINANCIAL INSTITUTION THAT HAS SUBSTAN-  
7 Tially COMPLIED WITH THE REQUIREMENTS OF THE FINANCIAL  
8 INSTITUTION'S PRIMARY STATE OR FEDERAL REGULATOR TO ADDRESS READ-  
9 INESS FOR COMPUTER DATE FAILURES IS CONCLUSIVELY PRESUMED TO HAVE  
10 MADE A GOOD FAITH EFFORT TO MAKE AND IMPLEMENT A YEAR 2000 READI-  
11 NESS PLAN.

12           (3) A FINANCIAL INSTITUTION AND THE EMPLOYEES, OFFICERS, AND  
13 DIRECTORS OF THE FINANCIAL INSTITUTION ARE NOT LIABLE TO A PERSON  
14 NOT IN PRIVACY OF CONTRACT WITH THE FINANCIAL INSTITUTION FOR  
15 DAMAGES OR OTHER RELIEF RELATING TO A COMPUTER DATE FAILURE.

16           (4) THE LIABILITY OF A FINANCIAL INSTITUTION THAT  
17 EXPERIENCES A COMPUTER DATE FAILURE IS LIMITED TO ACTUAL  
18 DAMAGES.

19           (5) THE COURT SHALL REDUCE THE AMOUNT OF DAMAGES RECOVERABLE  
20 IN AN ACTION SUBJECT TO THIS SECTION IN PROPORTION TO THE AMOUNT  
21 OF A CONTRIBUTING ACT OR OMISSION THAT IS ATTRIBUTABLE TO A THIRD  
22 PARTY ENGAGED BY A FINANCIAL INSTITUTION TO MAKE AND IMPLEMENT  
23 ALL OR PART OF ITS YEAR 2000 READINESS PLAN AND IN PROPORTION TO  
24 THE AMOUNT OF RESPONSIBILITY OF THE PERSON SEEKING DAMAGES UNDER  
25 THIS SECTION.

1       (6) THIS SECTION SHALL APPLY TO ALL LEGAL AND EQUITABLE  
2 ACTIONS THAT HAVE NOT BEEN FULLY AND FINALLY ADJUDICATED AS OF  
3 THE EFFECTIVE DATE OF THIS SECTION.

4       (7) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION OR  
5 REMEDY FOR COMPUTER DATE FAILURE.