ENGROSSED HOUSE
BILL NO. 1325

By: Weaver and Pope (Clay) of the House

and

Morgan of the Senate

(contracts - Y2K Protection Act - certain contingency plan – certain limitations - codification - effective date – emergency)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1021 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Y2K Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1022 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Defendant" means any individual, proprietor, firm, partnership, joint venturer, syndicate, business trust, company, corporation, limited liability company, association, committee or any other group of persons acting in concert who provides services to a customer or client through the use, in part, of a computer system, program, or software which may be affected by a computer date failure, but does not include any of the above entities who sell, manufacture, distribute or lease computer systems, programs, or software;

2. “Action” means any action to recover damages resulting directly or indirectly from a computer date failure, including an action based on a breach of contract for a computer date failure, a shareholder or derivative action based on a computer date failure, or an action based on an alleged failure to properly detect, disclose, prevent, report on, or remediate a computer date failure;

3. “Computer date failure” means either of the following:

a. the present or future inability of the computer system or computer program or software to accurately store, process, provide or receive data from, into and between the years 1999 and 2000 and beyond, including leap year calculations, if all other technology used in combination with such system, program or software properly exchanges data with it, or

b. the possibility of the existence of any such inability or incompatibility;

4. “Computer program or software” means a set of statements or instructions to be used directly or indirectly in a computer system in order to bring about a certain result;

5. “Computer system” means any electronic device or collection of devices, including support devices, networks and embedded chips, and excluding calculators that are not programmable, that contain computer programs or electronic instructions and that perform functions including logic, arithmetic, data processing, data storage and retrieval, communication or control;

6. “Actual damages” means damages which are immediately attributable to a computer date failure as the natural result of a computer date failure, and shall not include damages which are immediately attributable to an intervening act, nor include damages which flow immediately from the consequences or results of a computer date failure; and

7. “Consequential and remote damages” means damages which are immediately attributable to an intervening event, and shall not include damages which are immediately attributable to a computer date failure. Such intervening event may form a link in an unbroken chain of causation, so that the consequential and remote damages would not have occurred if they had not been set in motion by the computer date failure. Consequential and remote damages flow immediately from the consequences or results of a computer date failure, and shall not include damages which flow immediately from the computer date failure itself.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1023 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. If the conditions set out in subsection B of this section are established, then any action which is brought against a defendant because of a computer date failure shall:

1. Be brought only as an individual action and not as a class action;

2. Be deemed to be based solely and exclusively in contract to the exclusion of all other causes of action; and

3. If brought, only allow recovery for the actual damages resulting from a computer date failure and not for consequential and remote damages resulting from a computer date failure.

B. The conditions, referred to in subsection A of this section, shall be as follows:

1. The plaintiff in the action has not suffered any personal injury, other than emotional harm, as a result of the computer date failure;

2. The defendant in the action has made reasonable efforts to protect its computer systems, programs or software, which it uses to provide services to its clients or customers, from a computer date failure;

3. The defendant, no later than July 1, 1999, has tested its computer systems, programs or software, which it uses to provide services to its customers and clients, by actually simulating the transition from December 31, 1999 to January 1, 2000, and made any other tests that a reasonable person would believe necessary to prevent a computer date failure. The defendant is not required to test the computer system, program or software of any individual client or customer;

4. The defendant, no later than August 1, 1999, has prepared a contingency plan, that will provide for alternative methods of carrying out the services which it provides to its clients and customers, in order to remedy any problem with the services it provides to its clients and customers that may arise from a computer date failure. Such contingency plan must be able to be implemented within sixty (60) days after receiving written notice from a customer or client of an actual problem regarding the services of the defendant that has been caused by a computer date failure;

5. The defendant, no later than August 1, 1999, has provided notice by mail to its current, known customers or clients of its efforts to avoid a computer date failure, and has posted such notice prominently in its place of business for public review. For all new customers or clients, who become known to the defendant after August 1, 1999, the defendant shall provide notice of its efforts to avoid a computer date failure to these new customers or clients within sixty (60) days after these customers or clients become known to the defendant. The continuing notification, for all new clients who become known to the defendant after August 1, 1999, may be discontinued on July 1, 2000. The notice required in this paragraph shall include a summary of the following:

a. a general description of the Year 2000 compliance efforts of the defendant,

b. the likelihood that it will make a transition to the Year 2000 without a computer date failure,

c. the problems that could or will arise in the services which the defendant provides to its clients or customers should a computer date failure occur,

d. an explanation to the customers or clients of the defendant that all problems discovered in the services of the defendant which are possibly caused by a computer date failure should be reported to the defendant in writing,

e. an explanation to the customers or clients of the defendant of the contingency plan, which the defendant has prepared, that will provide alternative methods for carrying out the services which the defendant provides to its clients and customers, in order to remedy any problem in the services of the defendant that may arise from a computer date failure, and

f. an explanation to the customers or clients of the defendant that it should expect any problem with the defendant's services, that is caused by a computer date failure, to be remedied within sixty (60) days after the client or customer has notified the defendant in writing of a problem with the services of the defendant that may be caused by a computer date failure;

6. The defendant has or will implement the applicable portions of the contingency plan, or otherwise remedy the problem created by the computer date failure, within sixty (60) days after receiving written notice, from a client or customer, of a problem with its services that may be caused by a computer date failure.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1024 of Title 15, unless there is created a duplication in numbering, reads as follows:

The notification, set forth in subparagraph e of paragraph 5 of subsection B of Section 3 of this act, in whole or in part, shall not be admissible against the defendant to prove the accuracy or truth of any information set forth in the notification, in any action covered by this act, except that:

1. The notification may be admissible to serve as the basis for a claim brought by an individual, not as a class action, of anticipatory breach or repudiation of a contract, to the extent provided under paragraph 2 of subsection A of Section 3 of this act; and

2. The court, in any covered action, shall have discretion to limit application of this section in any case in which the court determines that the use of the disclosures of the defendant in the notification amounted to bad faith or fraud.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025 of Title 15, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed to:

1. Limit the ability of contracting parties to enter into agreements as they deem appropriate on the issue of liability and damages resulting from computer date failure;

2. Affect the validity of existing contracts created on or before enactment of this act regarding issues of liability and damages resulting from a computer date failure;

3. Recognize, endorse or suggest the existence or validity of any purported cause of action; or

4. Create a cause of action where none existed otherwise.

SECTION 6. This act shall become effective July 1, 1999.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 10th day of March, 1999.

_____
Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1999.

_____
President of the Senate