ENROLLED HOUSE
BILL NO. 1325

By: Weaver, Pope (Clay) and
Ostrander of the House

and

Morgan of the Senate

An Act relating to Y2K liability; creating the Y2K
Protection Act; creating short title; defining terms;
setting forth requirements for certain legal action;
establishing certain conditions upon which legal
action shall be based; requiring certain testing of
computer systems; requiring certain contingency plan;
providing certain immunity; limiting scope of
immunity; setting forth certain limitations of act;
adding a provision to the Governmental Tort Claims
Act; providing that the state and political
subdivisions of the state are immune from liability
for losses caused by certain failure or malfunction
of computer software or computer devices; providing
that no claim or cause of action may be brought
against the state, political subdivisions, officers
and employees, and immune contractors for certain
failure or malfunction of computer software or
computer devices; requiring certain provision in
contracts; providing that contracts will be construed
in certain manner; limiting scope of immunity;
defining terms; providing for codification; providing
an effective date; and declaring an 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:

Sections 1 through 4 of 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, business trust, company, corporation,
limited liability company, association, or any other group of
persons acting in concert who conducts any activity which relies, at
least in part, on 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 to or for others computer systems, programs, or software;

2. "Action" means any action to recover damages resulting directly 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 the 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, including leap year calculations, if all other technology used in combination with such system, program or software properly exchanges data with it;

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; and

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.

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 C of this section are established, then any action which is brought against a defendant 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, not afford recovery for punitive damages.

B.   A defendant shall not be liable for any damages arising from a computer date failure of any other party.

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

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

2.   The damages which are the basis of the action are not the result of pollution of the environment. As used in this paragraph, "pollution" and "environment" shall be defined as provided in Section 2-1-102 of Title 27A of the Oklahoma Statutes;

3.   The defendant has made reasonable efforts to protect against damages from a computer date failure;

4. The defendant has conducted reasonable testing of its computer systems, programs or software, which it uses to provide services. The defendant is not required to test the computer system, program or software of any third party; and

5. The defendant has prepared a contingency plan, that will provide for alternative methods of carrying out the services which it provides to its clients and customers.

D. No officer, employee or member of the board of directors of any defendant shall be held personally liable for any damages resulting from a computer date failure; however, this immunity shall not extend to intentional misconduct or grossly negligent acts or omissions personal to any such officer, employee or director.

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:

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 before July 1, 1999, 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;

4. Create a cause of action if none existed otherwise; or

5. Affect causes of action accruing after December 31, 2002.

SECTION 5.   NEW LAW   A new section of law to be codified in the Oklahoma Statutes as Section 155.2 of Title 51, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection C, D or E of this section, the state or any political subdivision of the state or an independent contractor of the state shall have no liability for losses from any failure or malfunction occurring before December 31, 2002, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times.

B. Except as provided in subsection C, D or E of this section, no claim or cause of action, including, without limitation, any civil action or action for declaratory of injunctive relief, whether arising out of contract or arising independent of contract, may be brought against the state or any political subdivision of the state or against an independent contractor or an officer or employee of the state or a political subdivision on the basis that a computer or other information system that is owned or operated by any of those persons produced, calculated or generated an incorrect date or failed to accurately store, process, provide or receive data. Any contract entered into by or on behalf of and in the capacity of this

state, an immune contractor or an officer or employee of the state or any of its agencies or political subdivisions must include a provision that provides immunity to those persons for any breach of contract that is caused by an incorrect date being produced, calculated or generated by a computer or computer system or caused a computer or computer system to fail to accurately store, process, provide or receive data that is owned or operated by any of those persons. Any contract subject to the provisions of this section that is entered into on or after July 1, 1999, has the legal effect of including the immunity required by this section, and any provision of the contract which is in conflict with this section is void. Notwithstanding any other provision herein, the provisions of this subsection shall not provide immunity from fulfilling a contract or relieve the state or any political subdivision of the state of its obligation to fulfill the terms of a contract or to provide services or make payments under the terms of the contract in a reasonable length of time.

C. A claim may be brought pursuant to the Governmental Tort Claims Act for negligence caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure resulted in bodily injury or death.

D. Neither the state or any political subdivision of the state shall be immune from a claim or cause of action if remediation efforts were not begun by January 1, 1999.

E. Nothing in this section shall limit the liability of any individual or entity to the state or any political subdivision of the state, and contracts between the state or any political subdivision of the state and an independent contractor will not include a provision, express or implied, that grants the independent contractor immunity from liability to the state or any political subdivision of the state for any breach of contract that is caused by an incorrect date being produced, calculated or generated by a computer or computer system that is owned or operated by the independent contractor.

F. As used in this section:

1. "Independent contractor" means a defendant, as defined in Section 2 of this act, providing, pursuant to contract, a computer program or software, a computer system, or providing computer technical assistance to the state or a political subdivision of the state;

2. "Remediation efforts" means:

a. in the case of software, writing computer code to correct dates in data sensitive programs,

b. in the case of embedded chips or systems, testing the embedded systems or chips to determine if they are year 2000 compliant or assisting vendors in testing for such compliance, and

c. making necessary corrections to make the system compliant; and

3. "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.

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 25th day of May, 1999.

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Speaker   of the House of
                Representatives

Passed the Senate the 25th day of May, 1999.

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President   of the Senate