

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1325

By: Weaver

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7 COMMITTEE SUBSTITUTE

8 An Act relating to contracts; creating the Y2K
9 Protection Act; creating short title; defining terms;
10 setting forth requirements for certain legal action;
11 establishing certain conditions upon which legal
12 action shall be based; requiring certain testing of
13 computer systems by certain date; requiring certain
14 contingency plan; requiring certain notice and
15 setting forth summary for such notice; prohibiting
16 admissibility of certain notice to prove certain
17 information; providing exceptions to
18 nonadmissibility; setting forth certain limitations
19 of act; providing for codification; providing an
20 effective date; and declaring an emergency.

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

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

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

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

30 As used in this act:

31 1. "Defendant" means any individual, proprietor, firm,
32 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

1 date failure, but does not include any of the above entities who
2 sell, manufacture, distribute or lease computer systems, programs,
3 or software;

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

10 3. "Computer date failure" means either of the following:

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

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

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

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

29 6. "Actual damages" means damages which are immediately
30 attributable to a computer date failure as the natural result of a
31 computer date failure, and shall not include damages which are
32 immediately attributable to an intervening act, nor include damages

1 which flow immediately from the consequences or results of a
2 computer date failure; and

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

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

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

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

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

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

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

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

31 2. The defendant in the action has made reasonable efforts to
32 protect its computer systems, programs or software, which it uses to

1 provide services to its clients or customers, from a computer date
2 failure;

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

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

20 5. The defendant, no later than August 1, 1999, has provided
21 notice by mail to its current, known customers or clients of its
22 efforts to avoid a computer date failure, and has posted such notice
23 prominently in its place of business for public review. For all new
24 customers or clients, who become known to the defendant after August
25 1, 1999, the defendant shall provide notice of its efforts to avoid
26 a computer date failure to these new customers or clients within
27 sixty (60) days after these customers or clients become known to the
28 defendant. The continuing notification, for all new clients who
29 become known to the defendant after August 1, 1999, may be
30 discontinued on July 1, 2000. The notice required in this paragraph
31 shall include a summary of the following:
32

- 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 client 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.

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

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

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

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

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

21 Nothing in this act shall be construed to:

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

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

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

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

31 SECTION 6. This act shall become effective July 1, 1999.
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1 SECTION 7. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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