105TH CONGRESS
2D SESSION

H. R. 4240

To provide that an action, including one to recover damages, resulting from a computer date failure shall be deemed to be based solely in contract when certain conditions have been met, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1998

Mr. DREIER (for himself and Mr. COX of California) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide that an action, including one to recover damages, resulting from a computer date failure shall be deemed to be based solely in contract when certain conditions have been met, and for other purposes.

1   *Be it enacted by the Senate and House of Representa-*

2   *tives of the United States of America in Congress assembled,*

3   **SECTION 1. SHORT TITLE.**

4   This Act may be cited as the "Y2K Liability and

5   Antitrust Reform Act".

6   **SEC. 2. LIABILITY FOR COMPUTER DATE FAILURE.**

7   (a) GENERAL RULE.—

1   (1) DESIGNERS, DEVELOPERS, AND MANUFAC-
2 TURERS.—An action which is brought in a Federal
3 or State court against a person because of a com-
4 puter date failure shall be deemed to be based solely
5 in contract and shall only allow recovery for con-
6 sequential business loss and costs of repairs or re-
7 placement resulting from the failure if the following
8 conditions are met:

9   (A) The plaintiff in the action has not suf-
10   fered any personal injury, excluding emotional
11   harm, as a result of the computer date failure.

12   (B) The defendant in the action has—

13   (i) given notice, described in para-
14   graph (2), by mail to all buyers known to
15   the defendant of the computer system or
16   any component of the system or computer
17   program or software or hardware that ex-
18   periences or may experience a computer
19   date failure and with respect to buyers not
20   known to the defendant given notice on the
21   defendant's World Wide Web site on the
22   Internet;

23   (ii) made available at no charge to the
24   buyer a repair or replacement for a com-
25   puter program or software or hardware

1 which was first introduced for sale after

2 December 31, 1994, and which was in-

3 volved in the computer date failure; and

4 (iii) made available to the buyer a re-

5 pair or replacement for a computer pro-

6 gram or software or hardware which was

7 first introduced for sale before January 1,

8 1995, and which was involved in a com-

9 puter date failure.

10 (2) NOTICE.—The notice specified in paragraph

11 (1)(B)(i) shall specify the computer system or com-

12 ponent of the system or computer program or soft-

13 ware supplied by the defendant that experiences or

14 may experience a computer date failure and shall ex-

15 plain the manner by which the buyer may obtain re-

16 pair or replacement of the computer system or com-

17 ponent of the system or computer program or soft-

18 ware if repair or replacement is available or obtain

19 additional information on such system, component,

20 program, or software.

21 (3) APPLICATION.—This subsection shall not be

22 construed to limit the ability of contracting parties

23 to enter into agreements as they deem appropriate

24 on the issues of liability and damages resulting from

25 computer date failure.

1   (4) DEFINITION.—For purposes of this sub-

2 section, the term "person" means a person who is

3 engaged in commerce to design, develop, or manu-

4 facture a computer system, computer program or

5 software, or component.

6   (b) SPECIAL RULE.—

7   (1) OTHER PERSONS.—An action which is

8 brought in a Federal or State court against a person

9 (other than a person described in subsection (a)) be-

10 cause of a computer date failure shall be deemed to

11 be based solely in contract and shall only allow re-

12 covery for consequential business loss and costs of

13 repairs or replacement resulting from the failure if

14 the following conditions are met:

15   (A) The plaintiff in the action has not suf-

16 fered any personal injury, excluding emotional

17 harm, as a result of the computer date failure.

18   (B) The defendant in the action has—

19   (i) made all reasonable efforts to pro-

20 tect its system, program, or software from

21 a computer date failure, including efforts

22 to acquire hardware or software that will

23 not experience a computer date failure;

24   (ii) not later than July 1, 1999, tested

25 its systems, programs, or software by actu-

1 ally simulating the transition from Decem-

2 ber 31, 1999 to January 1, 2000 and

3 made any other test that a reasonable per-

4 son would believe necessary to prevent a

5 computer date failure;

6 (iii) not later than August 1, 1999,

7 provided notice to its customers and to the

8 President's Council on the Year 2000 Con-

9 version of efforts to avoid a computer date

10 failure, including a general description of

11 its compliance efforts, the results of the

12 tests under clause (ii), and the likelihood

13 that it will make transition to the Year

14 2000 without a computer date failure; and

15 (iv) not later than August 1, 1999,

16 posted the notice it made under clause (iii)

17 prominently in its place of business for

18 public review.

19 The President's Council on the Year 2000 Con-

20 version shall make available the notice it re-

21 ceived under clause (iii) on the Council's home-

22 page on the worldwide web.

23 (2) APPLICATION.—This subsection shall not be

24 construed to limit the ability of contracting parties

25 to enter into agreements as they deem appropriate

1 on the issues of liability and damages resulting from

2 computer date failure.

3 (c) DEFINITIONS.—For purposes of this section:

4   (1) ACTION.—The term "action" means an ac-

5 tion to recover damages resulting directly or indi-

6 rectly from a computer date failure, an action based

7 on breach of contract, a shareholder or derivative ac-

8 tion, and an action based on an alleged failure to

9 properly detect, disclose, prevent, report on, or reme-

10 diate a computer date failure.

11   (2) COMPUTER DATE FAILURE.—The term

12 "computer date failure" means—

13   (A) a present or future inability of the

14   computer system or computer program or soft-

15   ware to accurately store, process, provide, or re-

16   ceive data from, into, and between the years

17   1999 and 2000 and beyond if all other tech-

18   nology used in combination with such system,

19   program, or software properly exchanges data

20   with it; or

21   (B) the possibility of the existence of any

22   such inability or incompatibility.

23   (3) COMPUTER PROGRAM OR SOFTWARE.—The

24 term "computer program or software" is a set of

25 statements or instructions to be used directly or in-

1 directly in a computer in order to bring about a cer-

2 tain result.

3   (4) COMPUTER SYSTEM.—The term "computer

4 system" means any electronic device or collection of

5 devices, including support devices, networks, and

6 embedded chips and excluding calculators that are

7 not programmable, that contains computer programs

8 or electronic instructions and that performs func-

9 tions, including logic, arithmetic, data processing,

10 data storage and retrieval, communication, or con-

11 trol.

SEC. 3. TEMPORARY ANTITRUST EXEMPTION.

13   (a) EXEMPTION.—Except as provided in subsection

14 (b), the antitrust laws shall not apply to conduct engaged

15 in, including making and implementing an agreement,

16 solely for the purpose of establishing responses designed

17 to mitigate the impact of computer date failure in a com-

18 puter system, in a component of a computer system, or

19 in a computer program or software if such conduct occurs,

20 or such agreement is made and implemented, only in the

21 period beginning on the date of the enactment of this Act

22 and ending December 31, 2001.

23   (b) EXCEPTION TO EXEMPTION.—Subsection (a)

24 shall not apply with respect to conduct that results in a

25 boycott of any person.

1   (c) DEFINITION OF ANTITRUST LAWS.—For pur-

2 poses of this section, the term "antitrust laws"—

3   (1) has the meaning given it in subsection (a)

4   of the first section of the Clayton Act (15 U.S.C.

5   12(a)), except that such term includes section 5 of

6   the Federal Trade Commission Act (15 U.S.C. 45)

7   to the extent such section 5 applies to unfair meth-

8   ods of competition, and

9   (2) includes any State law similar to the laws

10   referred to in subparagraph (A).

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