

HOUSE BILL No. 4424

March 18, 1999, Introduced by Rep. Kukuk 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) "COMPUTER PROGRAM OR SOFTWARE" IS A SET OF STATEMENTS OR
3 INSTRUCTIONS TO BE USED DIRECTLY OR INDIRECTLY IN A COMPUTER IN
4 ORDER TO BRING ABOUT A CERTAIN RESULT.
5 (B) "COMPUTER SYSTEM" MEANS ANY ELECTRONIC DEVICE OR COLLEC-
6 TION OF DEVICES, INCLUDING SUPPORT DEVICES, NETWORKS, AND
7 EMBEDDED CHIPS AND EXCLUDING CALCULATORS THAT ARE NOT PROGRAM-
8 MABLE, THAT CONTAINS COMPUTER PROGRAMS OR ELECTRONIC INSTRUCTIONS
9 AND THAT PERFORMS FUNCTIONS INCLUDING, BUT NOT LIMITED TO, LOGIC,
10 ARITHMETIC, DATA PROCESSING, DATA STORAGE AND RETRIEVAL,
11 COMMUNICATION, OR CONTROL.

1 (C) "COMPUTER DATE FAILURE" MEANS EITHER OF THE FOLLOWING:

2 (i) A PRESENT OR FUTURE INABILITY OF THE COMPUTER SYSTEM OR
3 COMPUTER PROGRAM OR SOFTWARE TO ACCURATELY STORE, PROCESS, PRO-
4 VIDE, OR RECEIVE DATA FROM, INTO, AND BETWEEN THE YEARS 1999 AND
5 2000 AND BEYOND, PROVIDED THAT ALL OTHER TECHNOLOGY USED IN COM-
6 BINATION WITH THE COMPUTER SYSTEM OR COMPUTER PROGRAM OR SOFTWARE
7 PROPERLY EXCHANGES DATA WITH IT.

8 (ii) THE POSSIBILITY OF THE EXISTENCE OF ANY SUCH INABILITY
9 OR INCOMPATIBILITY.

10 (D) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
11 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

12 (2) THE EXCLUSIVE REMEDY IN ANY ACTION, INCLUDING ONE TO
13 RECOVER DAMAGES, RESULTING DIRECTLY OR INDIRECTLY FROM A COMPUTER
14 DATE FAILURE, INCLUDING, BUT NOT LIMITED TO, AN ACTION BASED ON
15 BREACH OF CONTRACT, A DERIVATIVE OR SHAREHOLDER ACTION, OR AN
16 ACTION BASED ON AN ALLEGED FAILURE PROPERLY TO DETECT, DISCLOSE,
17 PREVENT, REPORT ON, OR REMEDIATE A COMPUTER DATE FAILURE, BROUGHT
18 AGAINST A PERSON WHO DESIGNED, DEVELOPED, OR MANUFACTURED A COM-
19 PUTER SYSTEM, A COMPONENT OF A COMPUTER SYSTEM, A COMPUTER PRO-
20 GRAM OR SOFTWARE THAT FAILED IS DEEMED TO BE AN ACTION BASED
21 SOLELY IN CONTRACT IF ALL OF THE FOLLOWING APPLY:

22 (A) THE PLAINTIFF HAS NOT SUFFERED ANY PERSONAL INJURY,
23 EXCLUDING EMOTIONAL HARM, AS A RESULT OF THE COMPUTER DATE
24 FAILURE.

25 (B) THE DEFENDANT HAS DONE ALL OF THE FOLLOWING:

1 (i) MADE AVAILABLE, AT NO CHARGE TO THE BUYER, A REPAIR OR
2 REPLACEMENT FOR AN OFF-THE-SHELF COMPUTER PROGRAM OR SOFTWARE
3 FIRST INTRODUCED FOR LICENSE OR SALE AFTER DECEMBER 31, 1997.

4 (ii) GIVEN NOTICE BY MAIL TO ALL REGISTERED BUYERS OF THE
5 COMPUTER SYSTEM, A COMPONENT OF THE COMPUTER SYSTEM, OR THE COM-
6 PUTER PROGRAM OR SOFTWARE THAT EXPERIENCES OR MAY EXPERIENCE A
7 COMPUTER DATE FAILURE OR, IF THE DEFENDANT IS NOT ABLE TO NOTIFY
8 BY MAIL EACH AND EVERY BUYER, THE DEFENDANT HAS GIVEN NOTICE BY
9 PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN EACH COUNTY
10 IN THIS STATE ONCE A WEEK FOR 4 CONSECUTIVE WEEKS AND BY POSTING
11 NOTICE ON THE DEFENDANT'S WORLDWIDE WEB SITE ON THE INTERNET IF
12 THE DEFENDANT HAS ONE.

13 (3) THE NOTICE ISSUED UNDER SUBSECTION (2) SHALL SPECIFY THE
14 COMPUTER SYSTEM, COMPONENT OF A COMPUTER SYSTEM, OR COMPUTER PRO-
15 GRAM OR SOFTWARE SUPPLIED BY A DEFENDANT THAT EXPERIENCES OR MAY
16 EXPERIENCE A COMPUTER DATE FAILURE AND SHALL EXPLAIN THE MANNER
17 BY WHICH THE BUYER MAY OBTAIN REPAIR OR REPLACEMENT OF THE COM-
18 PUTER SYSTEM, COMPONENT OF THE COMPUTER SYSTEM, OR COMPUTER PRO-
19 GRAM OR SOFTWARE, IF REPAIR OR REPLACEMENT IS AVAILABLE, OR
20 OBTAIN ADDITIONAL INFORMATION REGARDING THE COMPUTER SYSTEM, COM-
21 PONENT OF THE COMPUTER SYSTEM, OR COMPUTER PROGRAM OR SOFTWARE.

22 (4) A NOTICE ISSUED UNDER SUBSECTION (2) IS INADMISSIBLE FOR
23 ANY PURPOSE OTHER THAN PROOF OF THE FACT THAT NOTICE WAS GIVEN.

24 (5) THE EXCLUSIVE REMEDY IN ANY ACTION, INCLUDING ONE TO
25 RECOVER DAMAGES, RESULTING DIRECTLY OR INDIRECTLY FROM A COMPUTER
26 DATE FAILURE, INCLUDING, BUT NOT LIMITED TO, AN ACTION BASED ON
27 BREACH OF CONTRACT, A DERIVATIVE OR SHAREHOLDER ACTION, OR AN

1 ACTION BASED ON AN ALLEGED FAILURE PROPERLY TO DETECT, DISCLOSE,
2 PREVENT, REPORT ON, OR REMEDIATE A COMPUTER DATE FAILURE, BROUGHT
3 AGAINST ANY PERSON OTHER THAN A PERSON WHO DESIGNED, DEVELOPED,
4 OR MANUFACTURED A COMPUTER SYSTEM, A COMPONENT OF A COMPUTER
5 SYSTEM, OR A COMPUTER PROGRAM OR SOFTWARE THAT FAILED IS DEEMED
6 TO BE AN ACTION BASED SOLELY IN CONTRACT IF THE PLAINTIFF HAS NOT
7 SUFFERED ANY PERSONAL INJURY, EXCLUDING EMOTIONAL HARM, AS A
8 RESULT OF THE COMPUTER DATE FAILURE.

9 (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DO ANY OF
10 THE FOLLOWING:

11 (A) RECOGNIZE, ENDORSE, OR SUGGEST THE EXISTENCE OR VALIDITY
12 OF ANY PURPORTED CAUSE OF ACTION.

13 (B) CREATE A CAUSE OF ACTION WHERE NONE OTHERWISE EXISTED.

14 (C) LIMIT THE ABILITY OF A CONTRACTING PARTY TO ENTER INTO
15 AN AGREEMENT IT FINDS APPROPRIATE ON THE ISSUE OF LIABILITY, DAM-
16 AGES, OR BOTH, FOR COMPUTER DATE FAILURE.

17 (D) AFFECT THE VALIDITY OF AN AGREEMENT ARISING ON OR BEFORE
18 ENACTMENT OF THIS SECTION REGARDING ISSUES OF LIABILITY, DAMAGES,
19 OR BOTH, FOR COMPUTER DATE FAILURE.