

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 598
By: Duncan
Economic Development
3/16/1999
Committee Report (Substituted)

DIGEST

Currently, many computer programs prevent computers from recognizing and processing dates beginning with the year 2000. The inability to recognize the year, along with other dates, stems from a policy not countermanded by earlier computer programming decisions to limit the use of expensive resources to process information. Now, computer manufacturers and seller have distributed and provided huge quantities of merchandise, placing them in threat of litigation, containing the computer glitch known as the "Year 2000" or "Y2K" problem.

Texas citizens and the Texas economy rely to a great extent on the use of computers and computer technology. In an attempt to minimize a potentially critical economic disruption, legal exemptions to businesses from the date problem create an incentive for the businesses and consumers to work together to remedy the computer and computer software date problems, including a good faith effort for businesses to notify consumers about the date problem. By solving the problem, a solution would benefit citizens and the economy. In addition to providing legal incentives to solve the problem, a Texas Year 2000 Project Office website assists consumers in mitigating potential problems regarding the year 2000. C.S.S.B. 598 exempts certain businesses from lawsuits regarding computer date failures.

PURPOSE

As proposed, C.S.S.B. 598 exempts certain businesses from lawsuits regarding computer date failures.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. FINDINGS AND PURPOSES. Sets forth findings regarding the financial impact of the "Year 2000" or "Y2K" problem on the Texas economy and the need for establishing legal incentives to abate the problem. Sets forth purposes of this Act regarding protection for citizens and the economy, and establishes legal incentives that encourage certain actors in the computer industry to remedy the date problem.

SECTION 2. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 147, as follows:

CHAPTER 147. YEAR 2000 COMPUTER DATE FAILURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.001. DEFINITIONS. Defines "action," "claimant," "computer product," "computer service product," "defendant," "recent consumer product," "small business," and "Year 2000 Project Office website."

Sec. 147.002. ACTION FOR COMPUTER DATE FAILURE. Establishes that this chapter applies only to an action in which a claimant seeks to recover damages or other relief caused by certain computer failures, subject to Section 147.004, regardless of certain legalities including torts and breach of a contract or certain warranties.

Sec. 147.003. COMPUTER DATE FAILURE. Provides that a computer date failure is the inability to correctly process, recognize, store, receive, transmit, or in any way use date data in

certain instances regarding years.

Sec. 147.004. APPLICABILITY. Sets forth actions to which this chapter does not apply.

Sec. 147.005. DUTY OR ACTION NOT CREATED. Establishes that this chapter does not create a duty or a cause of action.

Sec. 147.006. IMMUNITY NOT AFFECTED. Establishes that this chapter does not expand or limit the immunity of a person under any other law or statute providing immunity.

Sec. 147.007. INSURANCE CONTRACT NOT AFFECTED. Establishes that this chapter does not affect the rights or obligations of parties under a contract of insurance.

Sec. 147.008. SOVEREIGN IMMUNITY NOT WAIVED. Provides that this chapter does not waive sovereign immunity of the state or of a political subdivision of the state.

SUBCHAPTER B. PREREQUISITES TO BRINGING ACTION

Sec. 147.041. LIMITATIONS PERIOD. Prohibits an action from being brought later than two years after the date the computer date failure first caused the harm that is the subject matter of the action. Provides that this section does not extend the limitations period within which an action for harm caused by a computer date failure may be commenced under any other law or revive a claim that is barred by the operation of any other law.

Sec. 147.042. REPOSE. Requires a claimant to commence an action against a manufacturer or seller of a computer product or computer service before the end of 15 years of a certain date, except as provided by Subsection (b). Provides that this section does not apply if a manufacturer or seller expressly represented that the computer product or service product would not manifest the computer date failure. Provides that this section does not reduce the limitations period that applies to an action that accrues before the end of the limitations period under this section, and does not extend the limitations period within which an action may be commenced under any other law.

Sec. 147.043. DISABILITY. Provides that Section 16.001 applies to the periods of limitation and repose established by this subchapter.

Sec. 147.044. NOTICE. Prohibits a claimant from commencing an action unless the claimant gave notice to the defendant before the 60th day preceding the date the action commences. Requires the claimant to give notice to the defendant by a certain time after the action commences, if the 60-day notice requirement under Subsection (a) would prevent commencing the action before the expiration of the period of limitation or repose. Requires a claimant to give notice by a certain date of a counterclaim, cross-claim, or third-party action. Sets forth required criteria for the notice.

Sec. 147.045. NOTICE STAYS PROCEEDINGS. Provides that all proceedings in the action are stayed for 60 days following the date the defendant received the notice under Section 147.044.

Sec. 147.046. FAILURE TO GIVE NOTICE. Requires the court on motion by the defendant to abate an action and require the defendant to give notice by a certain date if the claimant did not give notice as required. Requires the court to dismiss the claimant's action if the claimant does not give notice as required by Subsection (a)(2).

Sec. 147.047. INSPECTION. Authorizes a person receiving notice under Section 147.044 to inspect a computer product or computer service product that is subject to the claimant's control to assess the nature, scope, and consequences of the computer date failure. Requires the inspection to be conducted within reasonable conditions.

Sec. 147.048. OFFER TO SETTLE. Authorizes a defendant receiving notice under Section 147.044 to offer to settle the claim. Authorizes the offer to include curing or correcting the computer date failure. Requires the offer to be accepted by the claimant by a certain date after the offer is made or otherwise the offer is rejected. Authorizes the defendant to file a rejected offer

to settle with the court with an affidavit certifying its rejection. Prohibits a defendant from recovering damages in excess of the lesser of certain amounts tendered in a rejected offer to settle, upon the finding by the court. Provides that Subsection (d) does not apply if the court finds that the defendant making the offer could not perform the offer when the offer was made, or substantially misrepresented the value of the offer. Defines “damages.”

SUBCHAPTER C. AFFIRMATIVE DEFENSES TO LIABILITY

Sec. 147.081. **AFFIRMATIVE DEFENSE: GOOD FAITH EFFORT TO CURE OR CORRECT.** Provides that it is an affirmative defense to liability in an action if certain circumstance exist regarding the efforts to cure or avoid the date problem with notices and other attempts. Sets forth additional requirements to an affirmative defense that the defendant must prove.

Sec. 147.082. **NOTICE.** Sets forth required criteria for the notice under Section 147.081. Sets forth the date the notice must be received by the claimant. Authorizes the defendant to satisfy the notice requirement by showing delivery of the notice within a certain date or that the claimant actually received notice within a certain date. Provides that there is a rebuttable presumption that notice has been delivered to a claimant if the Year 2000 Project Office website provides certain access information or the toll-free telephone number under Section 147.083(e) provides access to the information. Authorizes the presumption to be rebutted by evidence that the claimant did not receive notice.

Sec. 147.083. **NOTICE ON YEAR 2000 PROJECT OFFICE WEBSITE.** Establishes that a person who provides information to satisfy requirements of Section 147.082 is responsible for the accuracy of the person’s information posted on the website. Provides that a person is not subject to the jurisdiction of the state courts solely on the basis that the person providing information to the Year 2000 website. Establishes that the state is not liable for any damages arising from a certain operation of the Year 2000 website and toll-free telephone phone or the reliance of the information on the website. Requires the Department of Information Resources (DIR) to provide the Year 2000 website and creating links to other websites. Requires DIR to establish a toll-free telephone number to provide information on the date problem for persons who are unable to access the Internet. Authorizes the DIR to provide the telephone number together with the General Services Commission. Exempts certain vendors and contracts with the DIR from the requirements of Title 10D, Government Code. Provides that vendors have no greater liability to third parties if the DIR elects to contract with one or more private vendors.

Sec. 147.084. **AFFIRMATIVE DEFENSE: RELIANCE.** Provides affirmative defenses against certain legal actions, include a defense that the defendant relied and believed certain false statements from the computer manufacturer or seller stating no date problem would manifest. Defines “computer date statement.”

Sec. 147.085. **ADMISSIBILITY OF STATEMENT RELATING TO COMPUTER DATE FAILURE.** Prohibits certain offers, notices, and statements from being admitted to prove liability for computer date failure. Provides that evidence of certain promises or furnishing a correction or cure to the date problem is admissible as evidence to the extent it is evidence of a guarantee or warranty regarding the date problem, and the claim is for breach of the guarantee or warranty. Provides that a statement made in the process of correcting, curing, or attempting to correct or cure a date problem is admissible if the statement is false, made with the knowledge that it is false, or claimed by the defendant to the claimant’s detriment.

SUBCHAPTER D. DAMAGES

Sec. 147.121. **DAMAGE LIMITATIONS APPLY ONLY IF DEFENDENT SHOWS GOOD FAITH EFFORT TO CURE OR CORRECT.** Establishes that the limitations on recovery of damages under Section 147.122 apply only if the defendant can demonstrate a good faith effort to cure, correct, avoid, or mitigate the date problem in the manner described by Section 147.081.

Sec. 147.122. **DAMAGES NOT RECOVERABLE.** Prohibits a claimant from recovering certain damages in an action, subject to Section 147.121. Defines “fraud” and “malice.”

Sec. 147.123. DUTY TO MITIGATE DAMAGES. Prohibits a claimant from recovering certain damages in an action, subject to Section 147.121.

SECTION 3. Amends Subchapter 101C, Civil Practice and Remedies Code, by adding Section 101.066, as follows:

Sec. 101.066. COMPUTER DATE FAILURE. Provides that this chapter does not apply to a claim for property damage caused by a computer date failure as described by Section 147.003, Civil Practice and Remedies Code.

SECTION 4. Requires DIR to perform its duties under Sections 147.083(d) and (e), Civil Practice and Remedies Code, before the 31st day after the effective date of this Act.

SECTION 5. (a) Makes application of this Act prospective, except as provided by Subsection (b).

(b) Makes application of Sections 147.041 and 147.042, Civil Practice and Remedies Code, prospective to September 1, 1999.

SECTION 6. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 147.001, Civil Practice and Remedies Code, by redefining “computer product” and “defendant” and by defining “recent consumer product” and “small business.”

Amends Section 147.003, Civil Practice and Remedies Code, by specifying the way a computer fails to correctly use computer dates.

Amends Section 147.004, Civil Practice and Remedies Code, by clarifying certain actions that this chapter does not apply regarding a computer date failure.

Amends Section 147.044, Civil Practice and Remedies Code, by changing the requirements in the notice that the claimant must give to the defendant regarding an action.

Amends Section 147.047, Civil Practice and Remedies Code, by defining “damages.”

Amends Section 147.081, Civil Practice and Remedies Code, by establishing further requirements for the affirmative defense in Subsection (a).

Amends Section 147.082, Civil Practice and Remedies Code, by adding a requirement in the notice under Section 147.081. Includes the toll-free number in the rebuttable presumption that notice was delivered to a claimant.

Amends Section 147.083, Civil Practice and Remedies Code, by including further damages the state is not responsible. Authorizes the DIR to establish the toll-free telephone number with the General Services Commission. Exempts certain private vendors and provides certain liability for the vendors who have certain contracts with DIR from the requirements of Title 2D, Government Code.

Amends Section 147.084, Civil Practice and Remedies Code, by adding another condition to an affirmative defense against liability involving a computer date statement or express warranty.

Amends Section 147.121, Civil Practice and Remedies Code, by adding good-faith actions the defendant could have made to protect a defendant against computer date failure.

Amends Section 147.122, Civil Practice and Remedies Code, by providing an exception to

exemplary or punitive damages a defendant is prohibited from recovering in an action, and removes exemptions to damages in an action for physical pain, disfigurement, and physical impairment.

SECTION 3.

Amends Chapter 101C, Civil Practice and Remedies Code, by deleting “harm” in a provision that this chapter does not apply to a claim for harm for property damages caused by a computer data failure.

SECTION 5.

Provides that this Act is prospective to specific sections of the Civil Practice and Remedies Code.

SECTION 6.

Effective date: upon passage, rather than 90 days after adjournment.