

SENATE CS FOR CS FOR HOUSE BILL NO. 82(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/16/99

Referred: Rules

Sponsor(s): REPRESENTATIVES ROKEBERG, Dyson, Halcro, Harris

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain claims arising out of or in connection with the year
2 2000 date change; amending Rule 23, Alaska Rules of Civil Procedure; and
3 providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that

6 (1) the majority of responsible business enterprises in Alaska are committed
7 to working in cooperation with their contracting partners towards the timely and cost-effective
8 resolution of the many technological, business, and legal issues associated with the year 2000
9 date change;

10 (2) it is important to encourage businesses to concentrate their attention and
11 resources in the short time remaining before January 1, 2000, on addressing, assessing,
12 remediating, and testing their year 2000 date change problems, and to minimize any possible
13 business disruptions associated with year 2000 date change issues;

14 (3) it is appropriate for the legislature to enact legislation to ensure that year

2000 date change problems do not unnecessarily disrupt state commerce or create unnecessary caseloads in the courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic affect of the year 2000 date change;

(4) year 2000 date change issues potentially affect practically all business enterprises to at least some degree, possibly giving rise to a large number of disputes;

(5) resorting to the legal system for resolution of year 2000 date change problems is not feasible for many businesses, particularly small businesses, because of the complexity and expense of pursuing resolution through the legal system;

(6) the delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with the year 2000 date change and work against the successful resolution of those difficulties.

(b) It is the intent of the legislature that

(1) this Act encourage businesses to approach their year 2000 date change disputes responsibly and to avoid unnecessary, time-consuming, and costly litigation about year 2000 date change related failures, particularly those that are not material;

(2) good faith negotiations occur between parties when there is a dispute over a year 2000 date change problem;

(3) in resolving year 2000 date change related disputes, the parties rely on a valid and enforceable contract, and that the provisions of this Act are inapplicable when a provision would supersede, intervene, or change a contractual obligation or provision;

(4) if a party is unsuccessful in asserting the year 2000 date change defenses created in this Act, nothing in this Act would preclude a court or jury from awarding compensatory or punitive damages as provided by law;

(5) if a party to a contract uses reasonable care to prevent or remedy year 2000 date change damages, the party not be liable for most civil damages resulting from the year 2000 date change.

* **Sec. 2.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.260. Claims against persons engaged in business arising out of or in connection with the year 2000 date change. (a) In a civil action based on a contract, a business or a member of the board of directors of a business is not liable

1 for damages arising from the year 2000 date change and caused directly or indirectly
 2 by a failure of an electronic computing device used in the business if the business
 3 shows by a preponderance of the evidence that

4 (1) the business made substantial efforts to avoid the damages claimed
 5 in the civil action, such as

6 (A) inventorying the electronic computing devices used by the
 7 business that may experience year 2000 date change failures;

8 (B) identifying critical electronic computing devices necessary
 9 to conduct the operations of the business;

10 (C) identifying the potential for year 2000 date change failures
 11 associated with electronic computing devices used by the business;

12 (D) preparing a plan to reprogram, fix, repair, replace, or
 13 otherwise remedy the electronic computing devices necessary to avert failure
 14 resulting from the year 2000 date change;

15 (E) complying with generally accepted practices of a business
 16 sector related to the year 2000 date change, including testing information
 17 systems for compliance with the year 2000 date change; and

18 (F) developing contingency plans in the event of an electronic
 19 computing device failure; or

20 (2) the business used reasonable care to prevent or remedy damages
 21 arising from the year 2000 date change and caused directly or indirectly by a failure
 22 of an electronic computing device.

23 (b) The defense in (a) of this section may not be asserted by a business that
 24 develops or manufactures software, firmware, microcode, hardware, or embedded
 25 microchips that create, read, write, calculate, compare, sequence, or otherwise process
 26 data that consists of dates, times, or both dates and time if the business represented
 27 that the software, firmware, microcode, hardware, or microchips were year 2000 date
 28 change compliant. This subsection does not apply to a business that only sells, rents,
 29 or leases software, firmware, microcode, or hardware that is developed or
 30 manufactured by another person.

31 (c) A civil action based on a contract against a business, or member of the

1 board of directors of a business, for damages arising from the year 2000 date change
 2 and caused directly or indirectly by a failure of an electronic computing device used
 3 in the business may not be brought as a class action unless the aggregate claim of all
 4 members of the class for economic loss exceeds \$150,000.

5 (d) In a civil action based on a contract against a business, or member of the
 6 board of directors of a business, for damages arising from the year 2000 date change
 7 and caused directly or indirectly by a failure of an electronic computing device used
 8 in the business,

9 (1) damages may not be awarded for noneconomic losses if the party
 10 bringing the claim is unable to prove by a preponderance of the evidence that the party
 11 defending the claim knew, or should have known, that the failure of the electronic
 12 computing device would cause the damages claimed in the civil action;

13 (2) the civil action may not proceed to trial until the person bringing
 14 the action, if appropriate,

15 (A) provides, if able to do so, written notice to the business that
 16 describes the failure of the mechanism that contains an electronic computing
 17 device arising from the year 2000 date change; and

18 (B) gives the business the opportunity to fix the problem,
 19 including reasonable access to electronic computing devices or software
 20 affected by the failure described under (A) of this paragraph;

21 (3) a provision of this section that conflicts with a year 2000 date
 22 change provision contained in a valid and enforceable contract between the parties to
 23 the civil action may not be applied in that civil action.

24 (e) This section does not apply to a civil action against a business, or a
 25 member of the board of directors of a business, for damages for personal injury or
 26 wrongful death arising from the year 2000 date change and caused directly or
 27 indirectly by a failure of an electronic computing device.

28 (f) In this section,

29 (1) "business" means a person or a for profit or a nonprofit entity
 30 engaged in a trade, service, profession, or activity with the goal of receiving a financial
 31 benefit in exchange for the provision of services, goods, or other property;

1 (2) "electronic computing device" includes any computer hardware or
2 software, a computer chip, an embedded chip, process control equipment, or other
3 information system that is used to capture, store, manipulate, or process data;

4 (3) "year 2000 date change" includes processing date or time data from,
5 into, and between the Twentieth and Twenty-First Centuries, and leap-year
6 calculations; in this paragraph, "processing" includes calculating, comparing,
7 sequencing, displaying, and storing.

8 * **Sec. 3.** AS 09.65.260 is repealed January 1, 2006.

9 * **Sec. 4.** AS 09.65.260(c), enacted by sec. 2 of this Act, has the effect of amending
10 Rule 23, Alaska Rules of Civil Procedure, by requiring, in a class action relating to the year
11 2000 date change, that the aggregate claim of all members of the class for economic loss
12 exceeds \$150,000.

13 * **Sec. 5.** APPLICABILITY. This Act applies to a cause of action arising from any failure
14 described in AS 09.65.260, enacted by sec. 2 of this Act, that accrues on or after the effective
15 date of this Act but before January 1, 2006.

16 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).