

**CS FOR HOUSE BILL NO. 82(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered: 3/5/99**

**Referred: Judiciary**

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

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

6 **Sec. 09.65.260. Claims against persons engaged in business arising out of**  
7 **or in connection with the year 2000 date change.** (a) A business or a member of  
8 the board of directors of a business is not liable for damages arising from the year  
9 2000 date change and caused directly or indirectly by a failure of an electronic  
10 computing device used in the business if the business shows by a preponderance of the  
11 evidence that

12 (1) the business made the following efforts to avoid the damages  
13 claimed in the civil action:

14 (A) inventory the electronic computing devices used by the

1 business that may experience year 2000 date change failures;

2 (B) identify critical electronic computing devices necessary to  
3 conduct the operations of the business;

4 (C) identify the potential for year 2000 date change failures  
5 associated with electronic computing devices used by the business;

6 (D) prepare a plan to reprogram, fix, repair, replace, or  
7 otherwise remedy the electronic computing devices necessary to avert failure  
8 resulting from the year 2000 date change;

9 (E) comply with industry regulations or requirements related to  
10 the year 2000 date change, including testing information systems for  
11 compliance with the year 2000 date change; and

12 (F) develop contingency plans in the event of an electronic  
13 computing device failure; or

14 (2) the business, by following generally accepted standards of care and  
15 effort in the business activity in which the business was engaged, exercised due  
16 diligence and reasonable care to prevent or remedy damages arising from the year  
17 2000 date change and caused directly or indirectly by a failure of an electronic  
18 computing device.

19 (b) The defense in (a) of this section may not be asserted

20 (1) by a business that develops or manufactures software, firmware,  
21 microcode, hardware, or embedded microchips that create, read, write, calculate,  
22 compare, sequence, or otherwise process data that consists of dates, times, or both  
23 dates and time if the business represented that the software, firmware, microcode,  
24 hardware, or microchips were year 2000 date change compliant; this paragraph does  
25 not apply to a business that only sells, rents, or leases software, firmware, microcode,  
26 or hardware that is developed or manufactured by another person; or

27 (2) in an action based on a contract.

28 (c) A civil action against a business, or member of the board of directors of  
29 a business, for damages arising from the year 2000 date change and caused directly  
30 or indirectly by a failure of an electronic computing device used in the business may  
31 not be brought as a class action unless each member of the class has a claim for

1 economic loss that exceeds \$50,000.

2 (d) In a civil action against a business, or member of the board of directors of  
3 a business, for damages arising from the year 2000 date change and caused directly  
4 or indirectly by a failure of an electronic computing device used in the business,

5 (1) damages may be awarded for economic losses only unless the  
6 business against whom the action is brought committed fraud;

7 (2) the civil action may not proceed to trial until the person bringing  
8 the action

9 (A) provides written notice to the business that describes the  
10 failure of the electronic computing device arising from the year 2000 date  
11 change; and

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

15 (3) the civil action must be submitted to mediation conducted under the  
16 Alaska Rules of Civil Procedure, unless all the parties agree to waive mediation.

17 (e) In this section,

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

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

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

28 \* **Sec. 2.** AS 09.65.260 is repealed January 1, 2006.

29 \* **Sec. 3.** AS 09.65.260(c), enacted by sec. 1 of this Act, has the effect of amending  
30 Rule 23, Alaska Rules of Civil Procedure, by requiring, in a class action relating to the year  
31 2000 date change, that each member of the class have a claim for economic loss that exceeds

1 \$50,000.

2 \* **Sec. 4.** APPLICABILITY. This Act applies to a cause of action arising from any failure  
3 described in AS 09.65.260, enacted by sec. 1 of this Act, that accrues on or after the effective  
4 date of this Act but before January 1, 2006.

5 \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).