

Act No. 239
Public Acts of 1999
Approved by the Governor
December 28, 1999
Filed with the Secretary of State
December 28, 1999
EFFECTIVE DATE: December 28, 1999

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999**

Introduced by Reps. Richner, Law, Koetje, Shulman, Hart and Voorhees

ENROLLED HOUSE BILL No. 4737

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," (MCL 600.101 to 600.9948) by amending the title and by adding section 2969; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts.

Sec. 2969. (1) As used in this section:

(a) "Actual damages" means direct economic losses proximately caused by a computer date failure. Actual damages may include fees, interest, or penalties charged to a person in privity of contract with a financial institution, either by a third party if the fees, interest, or penalties are the result of a computer date failure attributable to the financial institution, or by the financial institution. Actual damages do not include other indirect, special, or incidental damages or exemplary or noneconomic damages. Actual damages are limited by a written contract between the parties unless 1 of the parties to the contract is an individual or the contract is valued at less than \$100,000.00.

(b) "Affiliate" means a person that is in control of, is under the control of, or is under common control with another person.

(c) "Computer" means a high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(d) "Computer date failure" means a malfunction, including, but not limited to, the malfunction of an electronic or mechanical device or the inability of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately store, process, receive, or transmit data, that is caused directly or

indirectly by the failure of a computer, a computer network, a computer program, computer software, an embedded chip, or a computer system to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times in the years 1999 and 2000, and beyond.

(e) "Computer network" means an interconnection of 2 or more computers or computer systems by satellite, microwave, line, cable, wiring, or other communication medium with the capability to transmit information among the computers or computer systems.

(f) "Computer program" means an ordered set of data-coded instructions or statements that when executed by a computer cause the computer system to process data or perform specific functions.

(g) "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(h) "Computer system" means a combination of a computer or a computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(i) "Control" means possession of the authority, directly or indirectly, to direct or cause the direction of the management or policies of a person.

(j) "Embedded chip" means a single or multiple microprocessor chip that operates in conjunction with software, including software on the chip itself, that in some way controls a device or equipment, including, but not limited to, a computer or other electronic or mechanical device.

(k) "Financial institution" means an insured depository institution as defined in 12 U.S.C. 1813(c)(2), a credit union, an affiliate of a credit union or insured depository institution, or a servicer.

(l) "Noneconomic damages" means pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, or other nonpecuniary damages caused by a computer date failure.

(m) "Person" means an individual, corporation, partnership, association, limited liability company, trust, or other legal entity.

(n) "Residential mortgage" has the same meaning as the term "federally related mortgage loan" under section 3 of the real estate settlement procedures act of 1974, Public Law 93-533, 12 U.S.C. 2602.

(o) "Servicer" means the person, including a successor, responsible for receiving a scheduled periodic payment from an individual under the terms of a residential mortgage, including amounts for an escrow account, and for making payment of principal and interest and other payments with respect to the amount received from the borrower as are required by the mortgage terms. Servicer includes the person, including a successor, that makes or holds a loan if that person also services the loan.

(p) "Year 2000 readiness plan" means a plan pursuant to which a financial institution takes action that is reasonably calculated to avoid material disruption of its operations as a result of a computer date failure of a computer, computer network, computer program, computer software, embedded chip, or computer system under the control of the financial institution.

(2) Except as provided in subsection (3), this section governs every action against a financial institution or an employee, officer, or director of a financial institution to recover damages resulting directly or indirectly from an alleged computer date failure if the financial institution has made a good faith effort to make and implement a year 2000 readiness plan. A financial institution that has substantially complied with the requirements of the financial institution's primary state or federal regulator to address readiness for computer date failures is presumed to have made a good faith effort to make and implement a year 2000 readiness plan.

(3) This section does not apply to an action to recover damages for a wrongful death or injury to a person resulting from a computer date failure.

(4) A financial institution and the employees, officers, and directors of the financial institution are not liable to a person not in privity of contract with the financial institution for damages or other relief relating to a computer date failure.

(5) The liability of a financial institution that experiences a computer date failure is limited to actual damages.

(6) Except as otherwise provided in this section, a person that transacts business on matters directly or indirectly affecting residential mortgages shall not cause or permit a foreclosure on a residential mortgage against an individual if the basis for the foreclosure is an inaccurate or late payment on the residential mortgage that is caused by a computer date failure. Subject to the other provisions of this section, within 7 business days after an individual learns of the computer date failure that caused his or her inaccurate or late mortgage payment, the individual shall notify the servicer of his or her mortgage of the computer date failure and shall provide the servicer with available documentation relating to it.

(7) Subsection (6) does not apply unless the 7-business-day notice is strictly complied with and that notice is given before March 15, 2000. Subsection (6) does not apply to a residential mortgage payment upon which default occurs, or

with respect to which imminent default is foreseeable, before December 15, 1999. Subsection (6) delays, but does not prohibit, the enforcement of financial obligations and does not otherwise effect or extinguish obligations under a residential mortgage. If an individual's mortgage payment is not paid and the mortgage's servicer does not grant an expressly written time extension for the payment, an act to foreclose the mortgage prohibited by subsection (6) may be initiated or resumed, but not before the later of January 29, 2000, or 28 days after the servicer receives the notice required by subsection (6).

(8) The court shall reduce the amount of damages recoverable in an action subject to this section in proportion to the amount of a contributing act or omission that is attributable to a third party engaged by a financial institution to make and implement all or part of its year 2000 readiness plan and in proportion to the amount of responsibility of the person seeking damages under this section.

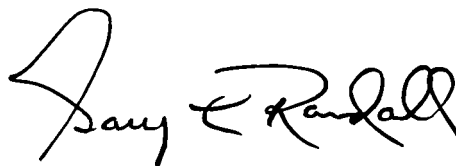
(9) This section shall apply to all legal and equitable actions relating to a computer date failure that have not been fully and finally adjudicated as of the effective date of this section.

(10) This section does not create a new cause of action or remedy for computer date failure.

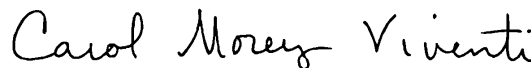
(11) An action subject to this section is barred if not commenced before January 1, 2001.

(12) This section is repealed January 1, 2003.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.