

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4737

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(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:

1 TITLE

2 An act to revise and consolidate the statutes relating to
3 the organization and jurisdiction of the courts of this state;
4 the powers and duties of such courts, and of the judges and other
5 officers thereof; the forms and attributes of civil claims and
6 actions; the time within which civil actions and proceedings may
7 be brought in said courts; pleading, evidence, practice and pro-
8 cedure in civil and criminal actions and proceedings in said
9 courts; to provide remedies and penalties for the violation of
10 certain provisions of this act; ~~and~~ to repeal all acts and

HB 4737, As Passed Senate, December 8, 1999

House Bill No. 4737

2

1 parts of acts inconsistent with ~~—~~ or contravening any of the
2 provisions of this act; AND TO REPEAL ACTS AND PARTS OF ACTS.

3 SEC. 2969. (1) AS USED IN THIS SECTION:

4 (A) "ACTUAL DAMAGES" MEANS DIRECT ECONOMIC LOSSES PROXI-
5 MATELY CAUSED BY A COMPUTER DATE FAILURE. ACTUAL DAMAGES MAY
6 INCLUDE FEES, INTEREST, OR PENALTIES CHARGED TO A PERSON IN PRIV-
7 ITY OF CONTRACT WITH A FINANCIAL INSTITUTION, EITHER BY A THIRD
8 PARTY IF THE FEES, INTEREST, OR PENALTIES ARE THE RESULT OF A
9 COMPUTER DATE FAILURE ATTRIBUTABLE TO THE FINANCIAL INSTITUTION,
10 OR BY THE FINANCIAL INSTITUTION. ACTUAL DAMAGES DO NOT INCLUDE
11 OTHER INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES OR EXEMPLARY OR
12 NONECONOMIC DAMAGES. ACTUAL DAMAGES ARE LIMITED BY A WRITTEN
13 CONTRACT BETWEEN THE PARTIES UNLESS 1 OF THE PARTIES TO THE CON-
14 TRACT IS AN INDIVIDUAL OR THE CONTRACT IS VALUED AT LESS THAN
15 \$100,000.00.

16 (B) "AFFILIATE" MEANS A PERSON THAT IS IN CONTROL OF, IS
17 UNDER THE CONTROL OF, OR IS UNDER COMMON CONTROL WITH ANOTHER
18 PERSON.

19 (C) "COMPUTER" MEANS A HIGH-SPEED DATA PROCESSING DEVICE
20 THAT PERFORMS LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS BY THE
21 MANIPULATIONS OF ELECTRONIC OR MAGNETIC IMPULSES AND INCLUDES ALL
22 INPUT, OUTPUT, PROCESSING, STORAGE, OR COMMUNICATION FACILITIES
23 THAT ARE CONNECTED OR RELATED TO THE DEVICE.

24 (D) "COMPUTER DATE FAILURE" MEANS A MALFUNCTION, INCLUDING,
25 BUT NOT LIMITED TO, THE MALFUNCTION OF AN ELECTRONIC OR MECHANI-
26 CAL DEVICE OR THE INABILITY OF A COMPUTER, A COMPUTER NETWORK, A
27 COMPUTER PROGRAM, COMPUTER SOFTWARE, AN EMBEDDED CHIP, OR A

HB 4737, As Passed Senate, December 8, 1999

House Bill No. 4737

3

1 COMPUTER SYSTEM TO ACCURATELY STORE, PROCESS, RECEIVE, OR
2 TRANSMIT DATA, THAT IS CAUSED DIRECTLY OR INDIRECTLY BY THE FAIL-
3 URE OF A COMPUTER, A COMPUTER NETWORK, A COMPUTER PROGRAM, COM-
4 PUTER SOFTWARE, AN EMBEDDED CHIP, OR A COMPUTER SYSTEM TO ACCU-
5 RATELY OR PROPERLY RECOGNIZE, CALCULATE, DISPLAY, SORT, OR OTHER-
6 WISE PROCESS DATES OR TIMES IN THE YEARS 1999 AND 2000, AND
7 BEYOND.

8 (E) "COMPUTER NETWORK" MEANS AN INTERCONNECTION OF 2 OR MORE
9 COMPUTERS OR COMPUTER SYSTEMS BY SATELLITE, MICROWAVE, LINE,
10 CABLE, WIRING, OR OTHER COMMUNICATION MEDIUM WITH THE CAPABILITY
11 TO TRANSMIT INFORMATION AMONG THE COMPUTERS OR COMPUTER SYSTEMS.

12 (F) "COMPUTER PROGRAM" MEANS AN ORDERED SET OF DATA-CODED
13 INSTRUCTIONS OR STATEMENTS THAT WHEN EXECUTED BY A COMPUTER CAUSE
14 THE COMPUTER SYSTEM TO PROCESS DATA OR PERFORM SPECIFIC
15 FUNCTIONS.

16 (G) "COMPUTER SOFTWARE" MEANS A SET OF COMPUTER PROGRAMS,
17 PROCEDURES, AND ASSOCIATED DOCUMENTATION RELATED TO THE OPERATION
18 OF A COMPUTER, COMPUTER SYSTEM, OR COMPUTER NETWORK.

19 (H) "COMPUTER SYSTEM" MEANS A COMBINATION OF A COMPUTER OR A
20 COMPUTER NETWORK WITH THE DOCUMENTATION, COMPUTER SOFTWARE, OR
21 PHYSICAL FACILITIES SUPPORTING THE COMPUTER OR COMPUTER NETWORK.

22 (I) "CONTROL" MEANS POSSESSION OF THE AUTHORITY, DIRECTLY OR
23 INDIRECTLY, TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT OR
24 POLICIES OF A PERSON.

25 (J) "EMBEDDED CHIP" MEANS A SINGLE OR MULTIPLE MICROPROCES-
26 SOR CHIP THAT OPERATES IN CONJUNCTION WITH SOFTWARE, INCLUDING
27 SOFTWARE ON THE CHIP ITSELF, THAT IN SOME WAY CONTROLS A DEVICE

HB 4737, As Passed Senate, December 8, 1999

House Bill No. 4737

4

1 OR EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, A COMPUTER OR OTHER
2 ELECTRONIC OR MECHANICAL DEVICE.

3 (K) "FINANCIAL INSTITUTION" MEANS AN INSURED DEPOSITORY
4 INSTITUTION AS DEFINED IN 12 U.S.C. 1813(c)(2), A CREDIT UNION,
5 AN AFFILIATE OF A CREDIT UNION OR INSURED DEPOSITORY INSTITUTION,
6 OR A SERVICER.

7 (L) "NONECONOMIC DAMAGES" MEANS PAIN, SUFFERING, INCONVE-
8 NIENCE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, MENTAL ANGUISH, EMO-
9 TIONAL DISTRESS, LOSS OF SOCIETY AND COMPANIONSHIP, LOSS OF CON-
10 SORTIUM, INJURY TO REPUTATION, HUMILIATION, OR OTHER NONPECUNIARY
11 DAMAGES CAUSED BY A COMPUTER DATA FAILURE.

12 (M) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,
13 ASSOCIATION, LIMITED LIABILITY COMPANY, TRUST, OR OTHER LEGAL
14 ENTITY.

15 (N) "RESIDENTIAL MORTGAGE" HAS THE SAME MEANING AS THE TERM
16 "FEDERALLY RELATED MORTGAGE LOAN" UNDER SECTION 3 OF THE REAL
17 ESTATE SETTLEMENT PROCEDURES ACT OF 1974, PUBLIC LAW 93-533, 12
18 U.S.C. 2602.

19 (O) "SERVICER" MEANS THE PERSON, INCLUDING A SUCCESSOR,
20 RESPONSIBLE FOR RECEIVING A SCHEDULED PERIODIC PAYMENT FROM AN
21 INDIVIDUAL UNDER THE TERMS OF A RESIDENTIAL MORTGAGE, INCLUDING
22 AMOUNTS FOR AN ESCROW ACCOUNT, AND FOR MAKING PAYMENT OF PRINCIPAL
23 AND INTEREST AND OTHER PAYMENTS WITH RESPECT TO THE AMOUNT
24 RECEIVED FROM THE BORROWER AS ARE REQUIRED BY THE MORTGAGE
25 TERMS. SERVICER INCLUDES THE PERSON, INCLUDING A SUCCESSOR, THAT
26 MAKES OR HOLDS A LOAN IF THAT PERSON ALSO SERVICES THE LOAN.

HB 4737, As Passed Senate, December 8, 1999

House Bill No. 4737

5

1 (P) "YEAR 2000 READINESS PLAN" MEANS A PLAN PURSUANT TO
2 WHICH A FINANCIAL INSTITUTION TAKES ACTION THAT IS REASONABLY
3 CALCULATED TO AVOID MATERIAL DISRUPTION OF ITS OPERATIONS AS A
4 RESULT OF A COMPUTER DATE FAILURE OF A COMPUTER, COMPUTER NET-
5 WORK, COMPUTER PROGRAM, COMPUTER SOFTWARE, EMBEDDED CHIP, OR COM-
6 PUTER SYSTEM UNDER THE CONTROL OF THE FINANCIAL INSTITUTION.

7 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THIS SECTION GOV-
8 ERNS EVERY ACTION AGAINST A FINANCIAL INSTITUTION OR AN EMPLOYEE,
9 OFFICER, OR DIRECTOR OF A FINANCIAL INSTITUTION TO RECOVER DAM-
10 AGES RESULTING DIRECTLY OR INDIRECTLY FROM AN ALLEGED COMPUTER
11 DATE FAILURE IF THE FINANCIAL INSTITUTION HAS MADE A GOOD FAITH
12 EFFORT TO MAKE AND IMPLEMENT A YEAR 2000 READINESS PLAN. A
13 FINANCIAL INSTITUTION THAT HAS SUBSTANTIALLY COMPLIED WITH THE
14 REQUIREMENTS OF THE FINANCIAL INSTITUTION'S PRIMARY STATE OR FED-
15 ERAL REGULATOR TO ADDRESS READINESS FOR COMPUTER DATE FAILURES IS
16 PRESUMED TO HAVE MADE A GOOD FAITH EFFORT TO MAKE AND IMPLEMENT A
17 YEAR 2000 READINESS PLAN.

18 (3) THIS SECTION DOES NOT APPLY TO AN ACTION TO RECOVER DAM-
19 AGES FOR A WRONGFUL DEATH OR INJURY TO A PERSON RESULTING FROM A
20 COMPUTER DATE FAILURE.

21 (4) A FINANCIAL INSTITUTION AND THE EMPLOYEES, OFFICERS, AND
22 DIRECTORS OF THE FINANCIAL INSTITUTION ARE NOT LIABLE TO A PERSON
23 NOT IN PRIVACY OF CONTRACT WITH THE FINANCIAL INSTITUTION FOR
24 DAMAGES OR OTHER RELIEF RELATING TO A COMPUTER DATE FAILURE.

25 (5) THE LIABILITY OF A FINANCIAL INSTITUTION THAT
26 EXPERIENCES A COMPUTER DATE FAILURE IS LIMITED TO ACTUAL
27 DAMAGES.

HB 4737, As Passed Senate, December 8, 1999

House Bill No. 4737

6

1 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON
2 THAT TRANSACTS BUSINESS ON MATTERS DIRECTLY OR INDIRECTLY AFFECT-
3 ING RESIDENTIAL MORTGAGES SHALL NOT CAUSE OR PERMIT A FORECLOSURE
4 ON A RESIDENTIAL MORTGAGE AGAINST AN INDIVIDUAL IF THE BASIS FOR
5 THE FORECLOSURE IS AN INACCURATE OR LATE PAYMENT ON THE RESIDEN-
6 TIAL MORTGAGE THAT IS CAUSED BY A COMPUTER DATE FAILURE. SUBJECT
7 TO THE OTHER PROVISIONS OF THIS SECTION, WITHIN 7 BUSINESS DAYS
8 AFTER AN INDIVIDUAL LEARNS OF THE COMPUTER DATE FAILURE THAT
9 CAUSED HIS OR HER INACCURATE OR LATE MORTGAGE PAYMENT, THE INDI-
10 VIDUAL SHALL NOTIFY THE SERVICER OF HIS OR HER MORTGAGE OF THE
11 COMPUTER DATE FAILURE AND SHALL PROVIDE THE SERVICER WITH AVAIL-
12 ABLE DOCUMENTATION RELATING TO IT.

13 (7) SUBSECTION (6) DOES NOT APPLY UNLESS THE 7-BUSINESS-DAY
14 NOTICE IS STRICTLY COMPLIED WITH AND THAT NOTICE IS GIVEN BEFORE
15 MARCH 15, 2000. SUBSECTION (6) DOES NOT APPLY TO A RESIDENTIAL
16 MORTGAGE PAYMENT UPON WHICH DEFAULT OCCURS, OR WITH RESPECT TO
17 WHICH IMMINENT DEFAULT IS FORESEEABLE, BEFORE DECEMBER 15, 1999.
18 SUBSECTION (6) DELAYS, BUT DOES NOT PROHIBIT, THE ENFORCEMENT OF
19 FINANCIAL OBLIGATIONS AND DOES NOT OTHERWISE EFFECT OR EXTINGUISH
20 OBLIGATIONS UNDER A RESIDENTIAL MORTGAGE. IF AN INDIVIDUAL'S
21 MORTGAGE PAYMENT IS NOT PAID AND THE MORTGAGE'S SERVICER DOES NOT
22 GRANT AN EXPRESSLY WRITTEN TIME EXTENSION FOR THE PAYMENT, AN ACT
23 TO FORECLOSE THE MORTGAGE PROHIBITED BY SUBSECTION (6) MAY BE
24 INITIATED OR RESUMED, BUT NOT BEFORE THE LATER OF JANUARY 29,
25 2000, OR 28 DAYS AFTER THE SERVICER RECEIVES THE NOTICE REQUIRED
26 BY SUBSECTION (6).

HB 4737, As Passed Senate, December 8, 1999

House Bill No. 4737

7

1 (8) THE COURT SHALL REDUCE THE AMOUNT OF DAMAGES RECOVERABLE
2 IN AN ACTION SUBJECT TO THIS SECTION IN PROPORTION TO THE AMOUNT
3 OF A CONTRIBUTING ACT OR OMISSION THAT IS ATTRIBUTABLE TO A THIRD
4 PARTY ENGAGED BY A FINANCIAL INSTITUTION TO MAKE AND IMPLEMENT
5 ALL OR PART OF ITS YEAR 2000 READINESS PLAN AND IN PROPORTION TO
6 THE AMOUNT OF RESPONSIBILITY OF THE PERSON SEEKING DAMAGES UNDER
7 THIS SECTION.

8 (9) THIS SECTION SHALL APPLY TO ALL LEGAL AND EQUITABLE
9 ACTIONS RELATING TO A COMPUTER DATE FAILURE THAT HAVE NOT BEEN
10 FULLY AND FINALLY ADJUDICATED AS OF THE EFFECTIVE DATE OF THIS
11 SECTION.

12 (10) THIS SECTION DOES NOT CREATE A NEW CAUSE OF ACTION OR
13 REMEDY FOR COMPUTER DATE FAILURE.

14 (11) AN ACTION SUBJECT TO THIS SECTION IS BARRED IF NOT COM-
15 MENCED BEFORE JANUARY 1, 2001.

16 (12) THIS SECTION IS REPEALED JANUARY 1, 2003.