

AMENDED IN ASSEMBLY APRIL 13, 1998
AMENDED IN ASSEMBLY MARCH 18, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1710

Introduced by Assembly Members Firestone and Cunneen
(Coauthor: Senator McPherson)

January 28, 1998

An act to add Section 3339 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, as amended, Firestone. Liability: computer failures.

Existing law specifies the measure of damages recoverable in tort and contract actions.

This bill would specify that an action, including one to recover damages, resulting from a computer data failure, as defined, shall be deemed to be based solely in contract when certain conditions apply, as specified.

The bill contains a corresponding statement of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of
2 the following:

3 (a) California’s economic future is becoming
4 increasing dependent upon the growth and deployment
5 of high technology. In particular, the development of the
6 computer and software industry and deployment of that
7 industry’s product to other California industries promises
8 to bring hundreds of thousands of high-paying jobs into
9 this state. It is essential that the Legislature create the
10 conditions that will enable the high technology industry
11 and other industries that use that technology to develop
12 in the years ahead and continue to help drive the overall
13 economy.

14 (b) The California Business Roundtable recently cited
15 the high costs of litigation, particularly the dramatic
16 growth in damages available under tort law, as being one
17 of the greatest barriers to doing business in California.

18 (c) A programming choice that may be found in a
19 wide variety of computers and other electronic devices
20 known as the “Year 2000 Computing Issue,” a present or
21 future inability of the computer or the computer system
22 or component thereof, program or software to accurately
23 store, process, provide, or receive data from, into, and
24 between the years 1999 and 2000 and beyond, may
25 jeopardize the growth of the high technology industry
26 and other industries that use that technology. This issue
27 requires updating or editing some computer software to
28 enable it to successfully deal with the coming date change
29 from 1999 to 2000 and beyond.

30 (d) Accordingly, it is the intent of the Legislature to
31 protect the future of the high technology industry and
32 other industries that use that technology in California by
33 improving predictability in litigation, promoting
34 advanced solutions to transition problems in order to
35 prevent computer date failure, and reducing the overall
36 cost of lawsuits while ensuring injured parties with legal
37 recourse.



1 (e) Furthermore, it is the intent of the Legislature that
2 the amendments made by this act shall be applicable with
3 respect to any claim that has not been finally adjudicated
4 by January 1, 1999.

5 SEC. 2. Section 3339 is added to the Civil Code, to
6 read:

7 3339. (a) Notwithstanding Chapter 5 (commencing
8 with Section 17200) of Part 2 of Division 7 of the Business
9 and Professions Code, Title 1.5 (commencing with
10 Section 1750) or Title 1.7 (commencing with Section
11 1790) of Part 4 of Division 3 of the Civil Code, or any other
12 provision of law, and unless otherwise agreed, the
13 exclusive remedy in any action, including one to recover
14 damages, resulting directly or indirectly from a computer
15 date failure, including one based on breach of contract,
16 derivative, shareholder, or any alleged failure properly to
17 detect, disclose, prevent, report on, or remediate a
18 computer date failure, brought against a person who ~~is in~~
19 ~~the business of designing, developing, or manufacturing~~
20 *designed, developed, or manufactured* the computer
21 system or computer program or software *or component*
22 *thereof* that failed, shall be deemed to be based solely in
23 contract when all of the following apply:

24 (1) The plaintiff has not suffered any personal injury,
25 excluding emotional harm, as a result of the computer
26 date failure.

27 (2) The defendant has done all of the following:

28 (A) *Made available at no charge to the buyer a repair*
29 *or replacement for an off-the-shelf computer program or*
30 *software first introduced for license or sale after*
31 *December 31, 1997.*

32 (B) Given notice by mail to all ~~known~~ *registered*
33 buyers of the computer system or any component thereof
34 or computer program or software that experiences or
35 may experience a computer date failure, or when the
36 defendant is not able to notify by mail each and every
37 buyer, the defendant has given notice by publication
38 pursuant to Section 6064 of the Government Code in a
39 newspaper of general circulation and by posting notice on
40 the *defendant's World Wide Web site on the Internet.*



1 ~~(B) Made available at no charge to the buyer the~~
2 ~~repair or replacement of the computer system or~~
3 ~~component thereof or computer program or software~~
4 ~~that failed or may fail with an equivalent computer~~
5 ~~system or computer program or software that will not~~
6 ~~experience a computer date failure.~~

7 ~~(C) The notices~~

8 ~~(C) The notice issued under subparagraph (A) (B)~~
9 ~~shall specify the computer system or component thereof~~
10 ~~or computer program or software *supplied by a*~~
11 ~~*defendant* that experiences or may experience a~~
12 ~~computer date failure, ~~the availability of replacement or~~~~
13 ~~~~repair at no charge to the buyer, and~~ *and shall explain* the~~
14 ~~manner by which the buyer may obtain repair or~~
15 ~~replacement of the computer system or component~~
16 ~~thereof or software, *if repair or replacement is available,*~~
17 ~~or *obtain* additional information regarding the computer~~
18 ~~system *or component thereof* or software.~~

19 (D) Pursuant to Section 1151 of the Evidence Code,
20 the notice issued under subparagraph ~~(A) (B)~~ is
21 inadmissible to prove breach of contract, breach of
22 warranty, negligence or other culpable conduct on the
23 part of the defendant. *for any purpose other than proof*
24 *of the fact that notice was given.*

25 (b) Notwithstanding Chapter 5 (commencing with
26 Section 17200) of Part 2 of Division 7 of the Business and
27 Professions Code, Title 1.5 (commencing with Section
28 1750) or Title 1.7 (commencing with Section 1790) of Part
29 4 of Division 3 of the Civil Code, or any other provision
30 of law, and unless otherwise agreed, the exclusive remedy
31 in any action, including one to recover damages, resulting
32 directly or indirectly from a computer date failure,
33 including breach of contract, derivative, shareholder, or
34 any other action based on an alleged failure properly to
35 detect, disclose, prevent, report on, or remediate a
36 computer date failure, brought against any person who is
37 ~~not in the business of designing, developing, or~~
38 ~~manufacturing other than the designer, developer, or~~
39 ~~manufacturer~~ the computer system or computer
40 program or software that failed, shall be in contract when



1 the plaintiff has not suffered any personal injury,
2 excluding emotional harm, as a result of the computer
3 date failure.

4 (c) As used in this section:

5 (1) “Computer program or software” is a set of
6 statements or instructions to be used directly or indirectly
7 in a computer in order to bring about a certain result.

8 (2) “Computer system” means any electronic device
9 or collection of devices, including support devices,
10 networks, and ~~imbedded~~ *embedded* chips and excluding
11 calculators that are not programmable, that contains
12 computer programs, electronic instructions, ~~input data,~~
13 ~~and output data,~~ and that performs functions including,
14 but not limited to, logic, arithmetic, *data processing*, data
15 storage and retrieval, communication, ~~and~~ *or* control.

16 (3) “Computer date failure” means either of the
17 following:

18 (A) A present or future inability of the computer
19 system, computer program or software to accurately
20 store, process, provide, or receive data from, into, and
21 between the years 1999 and 2000 and beyond, provided
22 that all other technology used in combination with the
23 system, program, or software properly exchanges data
24 with it.

25 (B) The possibility of the existence of any such
26 inability or incompatibility.

27 (d) “Person” means any individual, proprietorship,
28 firm, partnership, joint venture, syndicate, business trust,
29 company, corporation, limited liability company,
30 association, committee, and any other group of persons
31 acting in concert.

32 (e) Nothing in this section shall be construed to:

33 (1) Recognize, endorse, or suggest the existence or
34 validity of any purported cause of action.

35 (2) *Create a cause of action where none otherwise*
36 *existed.*

37 (3) Limit the ability of contracting parties to enter into
38 agreements as they deem appropriate on the issues of
39 liability and damages.

40 (3)



1 (4) Affect the validity of existing contracts created on
2 or before enactment of this section regarding issues of
3 liability and damages.

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