CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 15, 1999

S. 461
Year 2000 Fairness and Responsibility Act

As reported by the Senate Committee on the Judiciary on March 26, 1999

SUMMARY

Enacting S. 461 would provide some liability protection for businesses that fail to repair their year 2000 (Y2K) computer problems. CBO estimates that the net effect of S. 461 would most likely be a savings to the federal court system but we cannot estimate the extent of any such savings because we cannot predict the number of lawsuits that would arise—under either S. 461 or current law—from computer failures associated with the year 2000.

The cost of addressing the Y2K problem in the United States is estimated by some to total hundreds of billions of dollars. The extent to which such problems will be resolved prior to next January (or shortly thereafter) remains highly uncertain. Even more uncertain is the extent to which companies and individuals might file lawsuits against businesses because of problems encountered next year. CBO expects that enacting S. 461 could deter some potential plaintiffs from filing such lawsuits.

Some class action lawsuits may be shifted from state courts to federal courts under this bill. As a result, the federal courts could incur an increase in costs because class action lawsuits tend to be very timely and costly. However, CBO expects that any such increase would be more than offset by savings attributable to having fewer Y2K cases, overall, under the bill than under current law. Any net change in costs to the federal court system would affect appropriated spending. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

S. 461 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) but, overall, CBO expects that enacting this bill would lead to a savings for state, local, and tribal governments. The threshold established in UMRA ($50 million in 1996, adjusted annually for inflation) would thus not be exceeded. The bill also would impose a new privae-sector mandate but CBO cannot estimate the cost of the mandate.

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

S. 461 would provide various liability protections for businesses and state and local governments facing possible litigation arising from Y2K computer problems. In particular, the bill would:

- limit punitive damages to $250,000 or three times the actual damages that a plaintiff suffered, whichever is larger, and cap punitive damages at $250,000 for companies with fewer than 25 employees;

- require potential plaintiffs to give a prospective defendant 90 days to propose a plan to resolve the Y2K problem before any legal action could be taken under a lawsuit;

- assess any liability on a proportional basis, whereby a person against whom a judgment is made would be liable for only the portion of damages corresponding to that person's percentage of responsibility as determined by the judge; and

- ease restrictions for filing class action lawsuits in federal court.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that enacting S. 461 would probably result in a net reduction in the workload of the federal court system as compared to what would occur under current law. Thus far, about 60 complaints associated with Y2K problems have been filed; the majority of cases based on those complaints are class action lawsuits that have been filed in state courts. Several of the larger cases have been settled, but there is little basis for predicting the number or outcome of Y2K lawsuits that would be filed under S. 461 or under current law. Therefore, CBO cannot estimate the magnitude of any net savings to the federal government under the bill.

To the extent that a significant number of lawsuits related to Y2K problems are filed under current law, the Judiciary will either need to seek legislation authorizing additional judgeships and support personnel to address the increased workload or experience a severe backlog in cases. Because S. 461 would limit punitive damages associated with Y2K cases, give businesses 90 days to respond to Y2K problems before any legal action could be taken against them, and make other changes affecting liability laws, CBO expects that parties to lawsuits would be encouraged to reach a settlement. Thus, we anticipate that many lawsuits would not result in a trial, which can be timely and expensive. However, some class action lawsuits could be shifted from state to federal jurisdiction under S. 461 because the bill would ease restrictions for filing such actions in federal court. On balance, CBO estimates that the savings from eliminating trials for many lawsuits would more than offset any increased costs that might be incurred from trying additional class action lawsuits in federal court.

PAY-AS-YOU-GO CONSIDERATIONS: None.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Mandates

S. 461 contains intergovernmental mandates as defined in UMRA but, overall, CBO expects that enacting this bill would result in savings for state, local, and tribal governments. The bill would preempt state law by applying certain federal requirements to Y2K civil lawsuits filed in state courts after January 1, 1999, and by subjecting states to those requirements as potential plaintiffs. As potential plaintiffs, states would see a small increase in costs due to notice and filing requirements. Overall, CBO expects that these same requirements would deter some potential plaintiffs from filing and pursuing lawsuits, thus reducing the resources state courts would expend on this type of litigation.

The bill would set forth specific limits on punitive damages in Y2K civil lawsuits that would supersede inconsistent state laws. While no state has established Y2K liability protection for the private sector, several states currently are considering that issue in their legislative bodies. Any state that might pass laws covering provisions subject to S. 461 would be preempted by this bill.

Other Impacts

S. 461 would provide state and local governments the same protection from liability as provided to the private sector. Only a handful of states and the District of Columbia have already passed legislation specifically protecting themselves and their localities from Y2K liability. To the extent that state and local governments could become defendants in Y2K litigation and have not protected themselves from liability, this bill would provide such protection and could result in a savings.

Finally, by making it easier to file Y2K class action lawsuits in federal court, the bill could diminish some of the burden on state courts, where most of the current lawsuits have been filed. On the other hand, more individual cases might be filed in state courts to complement class action suits in federal courts. Overall, CBO anticipates the net effect of this bill would be a savings to state courts. This bill would not affect a suit filed by a public entity when acting in a regulatory, supervisory, or enforcement capacity.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 461 would impose a new private-sector mandate by requiring prospective plaintiffs in legal actions related to Y2K computer problems to notify prospective defendants of their intent to file suit and wait up to 90 days after such notification before filing. The notice must identify the cause and size of the prospective plaintiff's loss, the remedy sought, and the legal basis for the suit.

For a single prospective plaintiff, the cost of complying with the mandate, the expense incurred in drafting and delivering the notice, is relatively small. The notice would be, in effect, a summary of the suit to be filed, so that preparation for the suit would also be preparation for the notice. CBO cannot produce an estimate of the aggregate costs of the mandate, however, largely because we have no way to predict the number of Y2K lawsuits.

PREVIOUS CBO ESTIMATE

On March 19, 1999, CBO transmitted a cost estimate for S. 96, as reported by the Senate Committee on Commerce, Science, and Transportation on March 10, 1999. Both S. 96 and S. 461 would provide similar liability protections to businesses, and their effects on the federal budget, state and local governments, and the private sector would be very similar.

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