



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 7, 1999

### **H.R. 775** **Year 2000 Readiness and Responsibility Act**

*As ordered reported by the House Committee on the Judiciary on May 4, 1999*

#### **SUMMARY**

Enacting H.R. 775 would provide some liability protection for businesses that fail to repair their year 2000 (Y2K) computer problems. CBO estimates that the net effect of H.R. 775 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 H.R. 775 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 H.R. 775 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, so 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.

H. R. 775 also would require that any punitive damages awarded to plaintiffs be paid into a Year 2000 Recovery Fund in the U.S. Treasury instead of to the plaintiffs. Amounts in the fund would be used for assistance to small businesses, state and local governments, and nonprofit organizations. CBO estimates that the money collected by and spent from the fund would net to zero over the long run. But the government's collection of the payments for damages would not extinguish the plaintiffs' right to such awards. As a result, we expect that the federal government would ultimately be responsible for the payment of punitive damages

awarded to individuals. Any such additional payments would be considered direct spending, as would the spending of the new fund. Thus, H.R. 775 would be subject to pay-as-you-go procedures. While CBO cannot estimate the amounts of net direct spending under the bill, the amounts paid to plaintiffs could be significant.

H.R. 775 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 and local governments. The threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation) would thus not be exceeded. The bill also would impose new private-sector mandates but CBO cannot estimate the cost of the mandates.

## **DESCRIPTION OF THE BILL'S MAJOR PROVISIONS**

H.R. 775 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;
- Ease restrictions for filing class action lawsuits in federal court;
- Require a plaintiff to pay the defendant's attorneys fees if the defendant made an offer of settlement prior to trial that was rejected and later proved to be larger than the damages actually awarded in the subsequent trial; and
- Establish, within the U.S. Treasury, a Year 2000 Recovery Fund, and direct that the punitive damages awarded in any year 2000 action be paid into that fund. Amounts would be used to provide assistance to small business, state and local governments, and nonprofit organizations that are affected by Y2K problems.

## **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

### **Spending Subject to Appropriation**

CBO estimates that enacting H.R. 775 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 H.R. 775 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 H.R. 775 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 such businesses, 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 H.R. 775 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.

### **Direct Spending and Receipts**

By creating the Year 2000 Recovery Fund to collect and disburse punitive damages that are awarded by courts in year 2000 lawsuits, H.R. 775 would affect direct spending and receipts. Although cash flows of the fund would have no net budgetary impact, the collection by the federal government of damages awarded to plaintiffs would likely necessitate additional payments by the government to compensate the affected plaintiffs. While we cannot estimate the amount of punitive damages that could be awarded to plaintiffs and the resulting amounts of federal payments, we expect that the amounts could be significant. These additional payments would be considered direct spending.

## **PAY-AS-YOU-GO CONSIDERATIONS**

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Establishing the Year 2000 Recovery Fund would affect direct spending and receipts, and would probably lead to significant net costs to the federal government. However, CBO cannot estimate the extent of such costs.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

### **Mandates**

H.R. 775 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 and class action lawsuits filed in state courts and by subjecting state and local governments to those requirements as potential plaintiffs. As potential plaintiffs, they 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, to date, only one state has established Y2K liability protection for the private sector, several states currently are considering that issue in their legislative bodies. Any future state laws covering situations subject to H.R. 775 would be preempted by this bill.

### **Other Impacts**

In cases where state and local governments have no sovereign immunity law in place, H.R. 775 would provide them the same protection from liability as provided to the private sector. Only a handful of states and the District of Columbia have already enacted 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 some protection and could result in a savings.

The bill also would establish a Year 2000 Recovery Fund, derived from punitive damages awarded in Y2K cases. Amounts paid into the fund would be distributed to state and local

governments, small businesses, and nonprofit organizations affected by Y2K failures. State and local governments could benefit from these funds, but CBO has no basis for predicting how much state and local governments might receive.

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 that 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 acting in a regulatory, supervisory, or enforcement capacity.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 775 would create new private-sector mandates on prospective plaintiffs in disputes related to year 2000 computer problems and on attorneys who represent clients involved in such disputes. Title I would require prospective plaintiffs to notify prospective defendants of their intent to file suit and wait up to ninety days after such notification before filing. The notice must identify the source and size of the prospective plaintiff's injury, the remedy sought, and any person with the authority to negotiate a settlement on the plaintiff's behalf. Title V would require attorneys to provide clients with summaries of fees and expenses, notify clients of any written settlement offers, and provide clients with a notice describing these requirements. In class action suits, attorneys representing the injured class would make these disclosures to the presiding judge as well as to members of the class, and the presiding judge would set attorneys' fees. Title V would also limit contingent fees in all year 2000 computer problem suits to one-third of any damages recovered. Because CBO has no basis for predicting the number of lawsuits related to year 2000 computer problems, we cannot estimate the costs of these mandates.

H.R. 775 would also create additional burdens for private-sector plaintiffs awarded punitive damages by the courts. Section 304 would require punitive damages awarded in judgments related to year 2000 computer problems to be paid into the Year 2000 Recovery Fund in the Treasury. This provision would redirect funds from some private-sector plaintiffs, including members of an injured class in class action suits, medium-sized businesses, and large businesses, to the federal government. To recover these damages, plaintiffs might have to take legal action against the government. CBO cannot estimate the losses that would be incurred by such plaintiffs.

## **PREVIOUS CBO ESTIMATES**

On April 15, 1999, CBO transmitted a cost estimate for S. 461, the Year 2000 Fairness and Responsibility Act, as reported by the Senate Committee on the Judiciary on March 26, 1999. On March 19, 1999, CBO transmitted a cost estimate for S. 96, the Y2K Act, as reported by the Senate Committee on Commerce, Science, and Transportation on March 10, 1999. Both S. 96 and S. 461 are similar to H.R. 775 and the effects on state and local governments and the private-sector would be similar for all three bills. However, unlike the other bills, H.R. 775 would affect direct spending and receipts because of the collections and spending associated with the Year 2000 Recovery Fund.

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