



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 19, 1999

S. 96 **Y2K Act**

*As reported by the Senate Committee on Commerce, Science, and Transportation on
March 10, 1999*

SUMMARY

Enacting S. 96 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. 96 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. 96 or current law—from computer failures associated with the year 2000.

The cost of addressing the Y2K problem in the United States is expected 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. 96 could deter some potential plaintiffs from filing such lawsuits.

Some class action lawsuits may be shifted from state courts to federal court 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. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

S. 96 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 dollars, adjusted annually for inflation) would thus not be exceeded. The bill also would impose a new private-sector mandate but CBO cannot estimate the cost of the mandate.

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

S. 96 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. 96 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. 96 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. 96 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 S. 96 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

S. 96 contains intergovernmental mandates as defined in the UMRA but would impose no significant costs on state, local, or tribal governments. The bill would preempt state law by applying certain federal requirements to Y2K civil lawsuits filed in state courts after February 22, 1999. CBO expects that enacting this legislation would deter some potential plaintiffs from filing and pursuing lawsuits, thus reducing the resources state courts would expend on this type of litigation.

In addition, by easing the requirements for filing 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 supersede any state laws inconsistent with it. While no state has established Y2K liability protection for the private sector, several states currently are considering that issue in their legislative bodies. Finally, S. 96 would provide state and local governments protection from punitive damages arising from a Y2K action. Only six states and the District of Columbia have already passed legislation 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.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 96 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 ninety 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 is, in effect, a summary of the suit to be filed, so that preparation for the suit is also preparation for the notice. CBO cannot, however, produce an estimate of the aggregate costs of the mandate, largely because we have no way to predict the number of Y2K lawsuits.

ESTIMATE PREPARED BY:

Federal Costs: Susanne Mehlman

Impact on State, Local, and Tribal Governments: Lisa Cash Driskill

Impact on the Private Sector: John Harris

ESTIMATE APPROVED BY:

Robert A. Sunshine

Deputy Assistant Director for Budget Analysis