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OPINION

■ DAYLIGHT-SAVING TIME CHANGES ■

A threat worse than Y2K?

By Hillel I. Parness SPECIAL TO THE NATIONAL LAW JOURNAL

JUST FIVE YEARS after the United States got through the threat of Y2K—a technological challenge born of short-cut computer programming by those who did not (and perhaps could not) envision the long-term impact of their actions—Congress and the president have enacted a law that sets up a new, similar threat. I am referring to Section 110 of the Energy Policy Act of 2005, which changes the start and stop dates of daylight-saving time (DST), beginning in early 2007.

DST—adjusting our clocks forward in the spring and back in the fall—has been with us since the beginning of the 20th century, and the United States has tinkered with the formula numerous times over the years, most recently in 1986. March 2007 will mark the next phase of this ongoing experiment. By the law enacted on Aug. 8, the United States will expand the DST period by four or five weeks each year. Specifically, DST will start the second Sunday of March (instead of the first Sunday of April) and end the first Sunday of November (instead of the last Sunday of October).

Overhasty legislation

The addition of Section 110 to the Energy Policy Act appears rushed. A mere four sentences long, this legislation contains an ambiguity that has already caused commentators to publish divergent interpretations about when Congress will have the power to "revert" to 2005 DST rules. When I called the House Energy and Commerce Committee seeking clarification, and brought the issue to a staffer's attention (apparently for the first time), I was told that it "must have been a drafting error."

This drafting error, however, seems symptomatic of a larger malady: the failure by Congress and the White House to recognize the full impact of changing the DST rules in the 21st century. With each change to DST over the years, its supporters and detractors have raised familiar arguments: whether DST helps or harms farmers, whether DST does or does not result in any energy savings, whether the changes will affect transportation schedules, and the like. But the modern world gives rise to a new and important side effect. Today, a great number of computers, and an increasing number of computerized devices, automatically adjust their internal clocks for DST, according to the current rules.

So why write about this here? Because on March 11, 2007, all self-adjusting computers and devices will be wrong, unless they are corrected or replaced. Unless significant steps are taken, this will lead to some level of business errors and failures. And, perhaps more importantly, these errors and failures are likely to give rise to litigation.

Does this sound a lot like Y2K? It should, but there are some important differences. For one, Y2K was a one-time event. DST affects clocks twice a year, every year. Manual correction of an automatically adjusting computer or device becomes a four-times-a-year commitment, beginning in 2007. Careful and organized upgrading of software will be a necessity for most businesses. Identifying and correcting stand-alone devices presents a more formidable challenge. Also, because Congress has expressly reserved its right to revert to 2005 DST rules, we could go through this all over again.

Also, Congress has made no move to ease the transition to expanded DST. This stands in stark contrast to its response to Y2K: the passage of the Y2K Act, which limited liability for Y2K-related problems and made it more difficult to bring Y2K-based suits. There has been no discussion about passing similar measures to protect companies for failure to adapt perfectly to the new DST rules. This seems backward, at best. The Y2K problem was not a product of governmental oversight or error, but rather a natural consequence of decisions made by programmers. By contrast, the DST changes are the direct product of our legislators, and yet they have taken no steps to deal with the inevitable impact on companies through the legal system.

When discussing secondary liability with my students, I begin by explaining that a general rule in U.S. jurisprudence is that a passerby has no duty to save a man drowning in a river unless the passerby accidentally knocked him in. In less than 18 months, Section 110 of the Energy Policy Act is going to knock many businesses into some pretty swift water. Not only has Congress failed to throw us a life preserver, but it has yet to even realize how deep the river is. Over the next 16 months, companies would be well served by taking the time to examine their systems, products and contracts, and put plans in place to prepare for March 2007. NLJ

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