

106TH CONGRESS
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H. R. 775

[Report No. 106-]

To establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1999

Mr. DAVIS of Virginia (for himself, Mr. DREIER, Mr. COX, Mr. MORAN of Virginia, Mr. CRAMER, and Mr. DOOLEY of California) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MAY , 1999

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 23, 1999]

A BILL

To establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Year 2000 Readiness*
3 *and Responsibility Act”.*

4 **SEC. 2. FINDINGS.**

5 *The Congress finds the following:*

6 (1) *The Congress seeks to encourage businesses to*
7 *concentrate their attention and resources in the short*
8 *time remaining before January 1, 2000, on address-*
9 *ing, assessing, remediating, and testing their year*
10 *2000 problems, and to minimize any possible business*
11 *disruptions associated with year 2000 issues.*

12 (2) *It is appropriate for the Congress to enact*
13 *legislation to assure that year 2000 problems do not*
14 *unnecessarily disrupt interstate commerce or create*
15 *unnecessary case loads in Federal and State courts*
16 *and to provide initiatives to help businesses prepare*
17 *and be in a position to withstand the potentially dev-*
18 *astating economic impact of the year 2000 problem.*

19 (3) *Year 2000 issues will affect practically all*
20 *business enterprises to some degree, giving rise to a*
21 *large number of disputes.*

22 (4) *Resorting to the legal system for resolution of*
23 *year 2000 problems is not feasible for many busi-*
24 *nesses, particularly small businesses, because of its*
25 *complexity and expense.*

1 (5) *The delays, expense, uncertainties, loss of*
2 *control, adverse publicity and animosities that fre-*
3 *quently accompany litigation of business disputes can*
4 *only exacerbate the difficulties associated with the*
5 *year 2000 date change, and work against the success-*
6 *ful resolution of those difficulties.*

7 (6) *The Congress recognizes that every business*
8 *in the United States should be concerned that wide-*
9 *spread and protracted year 2000 litigation may*
10 *threaten the network of valued and trusted business*
11 *relationships that are so important to the effective*
12 *functioning of the world economy, and which may*
13 *put unbearable strains on an overburdened judicial*
14 *system.*

15 (7) *A proliferation of frivolous year 2000 actions*
16 *by opportunistic parties may further limit access to*
17 *courts by straining the resources of the legal system*
18 *and depriving deserving parties of their legitimate*
19 *rights to relief.*

20 (8) *The Congress encourages businesses to ap-*
21 *proach their year 2000 disputes responsibly, and to*
22 *avoid unnecessary, time-consuming and costly litiga-*
23 *tion based on year 2000 failures. Congress supports*
24 *good faith negotiations between parties when there is*
25 *a dispute over a year 2000 problem, and, if necessary,*

1 *urges the parties to enter into voluntary, non-binding*
2 *mediation rather than litigation.*

3 **SEC. 3. DEFINITIONS.**

4 *In this Act:*

5 (1) *CONTRACT.*—*The term “contract” means a*
6 *contract, tariff, license, or warranty.*

7 (2) *DEFENDANT.*—*The term “defendant” means*
8 *any person against whom a year 2000 claim has been*
9 *asserted.*

10 (3) *ECONOMIC LOSS.*—*The term “economic*
11 *loss”—*

12 (A) *means any damages other than damages*
13 *arising out of personal injury or damage to tan-*
14 *gible property; and*

15 (B) *includes, but is not limited to, damages*
16 *for lost profits or sales, for business interruption,*
17 *for losses indirectly suffered as a result of the de-*
18 *fendant’s wrongful act or omission, for losses*
19 *that arise because of the claims of third parties,*
20 *for losses that must be pleaded as special dam-*
21 *ages, and consequential damages (as defined in*
22 *the Uniform Commercial Code or analogous*
23 *State commercial law).*

24 (4) *GOVERNMENTAL ENTITY.*—*The term “govern-*
25 *mental entity” means an agency, instrumentality,*

1 *other entity, or official of Federal, State, or local gov-*
2 *ernment (including multijurisdictional agencies, in-*
3 *strumentalities, and entities).*

4 (5) *MATERIAL DEFECT.*—*The term “material de-*
5 *fect” means a defect in any item, whether tangible or*
6 *intangible, or in the provision of a service, that sub-*
7 *stantially prevents the item or service from operating*
8 *or functioning as designed or intended. The term*
9 *“material defect” does not include a defect that has*
10 *an insignificant or de minimis effect on the operation*
11 *or functioning of an item, that affects only a compo-*
12 *nent of an item that, as a whole, substantially oper-*
13 *ates or functions as designed, or that has an insignifi-*
14 *cant or de minimis effect on the efficacy of the service*
15 *provided.*

16 (6) *PERSON.*—*The term “person” means any*
17 *natural person and any entity, organization, or en-*
18 *terprise, including but not limited to corporations,*
19 *companies, joint stock companies, associations, part-*
20 *nerships, trusts, and governmental entities.*

21 (7) *PERSONAL INJURY.*—*The term “personal in-*
22 *jury” means any physical injury to a natural person,*
23 *including death of the person, and mental suffering,*
24 *emotional distress, or like elements of injury suffered*

1 *by a natural person in connection with a physical in-*
2 *jury.*

3 (8) *PLAINTIFF.*—*The term “plaintiff” means*
4 *any person who asserts a year 2000 claim.*

5 (9) *PUNITIVE DAMAGES.*—*The term “punitive*
6 *damages” means damages that are awarded against*
7 *any person to punish such person or to deter such*
8 *person, or others, from engaging in similar behavior*
9 *in the future.*

10 (10) *STATE.*—*The term “State” means any*
11 *State of the United States, the District of Columbia,*
12 *the Commonwealth of Puerto Rico, the Northern Mar-*
13 *iana Islands, the United States Virgin Islands,*
14 *Guam, American Samoa, and any other territory or*
15 *possession of the United States, and any political sub-*
16 *division thereof.*

17 (11) *YEAR 2000 ACTION.*—*The term “year 2000*
18 *action” means any civil action of any kind brought*
19 *in any court under Federal or State law, or an agen-*
20 *cy board of contract appeal proceeding, in which a*
21 *year 2000 claim is asserted.*

22 (12) *YEAR 2000 CLAIM.*—*The term “year 2000*
23 *claim”—*

24 (A) *means any claim or cause of action of*
25 *any kind, other than a claim based on personal*

1 *injury, whether asserted by way of claim, coun-*
2 *terclaim, cross-claim, third-party claim, defense,*
3 *or otherwise, in which the plaintiff's alleged loss*
4 *or harm resulted, directly or indirectly, from a*
5 *year 2000 failure;*

6 *(B) includes a claim brought in any Fed-*
7 *eral or State court by a governmental entity*
8 *when acting in a commercial or contracting ca-*
9 *capacity; and*

10 *(C) does not include a claim brought by*
11 *such a governmental entity acting in a regu-*
12 *latory, supervisory, or enforcement capacity.*

13 *(13) YEAR 2000 FAILURE.—The term “year 2000*
14 *failure” means any failure by any device or system*
15 *(including, without limitation, any computer system*
16 *and any microchip or integrated circuit embedded in*
17 *another device or product), or any software,*
18 *firmware, or other set or collection of processing in-*
19 *structions, however constructed, in processing, calcu-*
20 *lating, comparing, sequencing, displaying, storing,*
21 *transmitting, or receiving year 2000 date-related*
22 *data.*

23 **SEC. 4. APPLICATION OF ACT.**

24 *(a) GENERAL RULE.—This Act applies to any year*
25 *2000 claim brought after February 22, 1999, including any*

1 *appeal, remand, stay, or other judicial, administrative, or*
2 *alternative dispute resolution proceeding with respect to*
3 *such claim.*

4 (b) *NO NEW CAUSE OF ACTION CREATED.—Nothing*
5 *in this Act creates a new cause of action, and, except as*
6 *otherwise explicitly provided in this Act, nothing in this*
7 *Act expands any liability otherwise imposed or limits any*
8 *defense otherwise available under Federal or State law.*

9 (c) *EXCLUSION OF PERSONAL INJURY CLAIMS.—None*
10 *of the provisions of this Act shall apply to any claim based*
11 *on personal injury.*

12 (d) *PREEMPTION OF STATE LAW.—Except as other-*
13 *wise provided in this Act, this Act supersedes State law to*
14 *the extent that it establishes a rule of law applicable to a*
15 *year 2000 claim that is inconsistent with State law.*

16 **TITLE I—UNIFORM PRE-**
17 **LITIGATION PROCEDURES**
18 **FOR YEAR 2000 ACTIONS**

19 **SEC. 101. NOTICE PROCEDURES TO AVOID UNNECESSARY**
20 **YEAR 2000 ACTIONS.**

21 (a) *NOTIFICATION PERIOD.—Before filing a year 2000*
22 *action, except an action that seeks only injunctive relief,*
23 *a prospective plaintiff shall send by certified mail to each*
24 *prospective defendant a written notice that identifies, with*
25 *particularity as to any year 2000 claim—*

1 (1) *any symptoms of any material defect alleged*
2 *to have caused harm or loss;*

3 (2) *the harm or loss allegedly suffered by the pro-*
4 *spective plaintiff;*

5 (3) *the facts that lead the prospective plaintiff to*
6 *hold such person responsible for both the defect and*
7 *the injury;*

8 (4) *the relief or action sought by the prospective*
9 *plaintiff; and*

10 (5) *the name, title, address, and telephone num-*
11 *bers of any individual who has authority to negotiate*
12 *a resolution of the dispute on behalf of the prospective*
13 *plaintiff.*

14 *Except as provided in subsection (c), the prospective plain-*
15 *tiff shall not commence an action in Federal or State court*
16 *until the expiration of 90 days after the date on which such*
17 *notice is received. Such 90-day period shall be excluded in*
18 *the computation of any applicable statute of limitations.*

19 (b) *RESPONSE TO NOTICE.—*

20 (1) *IN GENERAL.—Not later than 30 days after*
21 *receipt of the notice specified in subsection (a), each*
22 *prospective defendant shall send by certified mail*
23 *with return receipt requested to each prospective*
24 *plaintiff a written statement acknowledging receipt of*
25 *the notice and describing any actions it has taken or*

1 *will take by not later than 60 days after the end of*
2 *that 30-day period, to remedy the problem identified*
3 *by the prospective plaintiff.*

4 (2) *INADMISSIBILITY.*—*A written statement re-*
5 *quired by this subsection is not admissible in evi-*
6 *dence, under Rule 408 of the Federal Rules of Evi-*
7 *dence or any analogous rule of evidence in any State,*
8 *in any proceeding to prove liability for, or the inva-*
9 *lidity of, a claim or its amount, or otherwise as evi-*
10 *dence of conduct or statements made in compromise*
11 *negotiations.*

12 (3) *PRESUMPTIVE TIME OF RECEIPT.*—*For pur-*
13 *poses of paragraph (1), a notice under subsection (a)*
14 *is presumed to be received 7 days after it was sent.*

15 (c) *FAILURE TO RESPOND.*—*If a prospective defend-*
16 *ant fails to respond to a notice provided pursuant to sub-*
17 *section (a) within the 30-day period specified in subsection*
18 *(b) or does not describe the action, if any, that the prospec-*
19 *tive defendant has taken or will take to remedy the problem*
20 *identified by the prospective plaintiff within the subsequent*
21 *60 days, the 90-day period specified in subsection (a) shall*
22 *terminate at the end of that 30-day period as to that pro-*
23 *spective defendant and the prospective plaintiff may there-*
24 *after commence its action against that prospective defend-*
25 *ant.*

1 (d) *FAILURE TO PROVIDE NOTICE.*—If a defendant de-
2 termines that a plaintiff has filed a year 2000 action with-
3 out providing the notice specified in subsection (a) and
4 without awaiting the expiration of the 90-day period speci-
5 fied in subsection (a), the defendant may treat the plain-
6 tiff's complaint as such a notice by so informing the court
7 and the plaintiff in its initial response to the complaint.
8 If any defendant elects to treat the complaint as such a
9 notice—

10 (1) the court shall stay all discovery in the ac-
11 tion involving that defendant for the applicable time
12 period provided in subsection (a) or (c), as the case
13 may be, after filing of the complaint; and

14 (2) the time for filing answers and all other
15 pleadings shall be tolled during such applicable pe-
16 riod.

17 (e) *EFFECT OF CONTRACTUAL WAITING PERIODS.*—In
18 cases in which a contract or a statute enacted before Janu-
19 ary 1, 1999, requires notice of nonperformance and provides
20 for a period of delay prior to the initiation of suit for
21 breach or repudiation of contract, the period of delay pro-
22 vided in the contract or the statute is controlling over the
23 waiting period specified in subsections (a) and (d).

24 (f) *SANCTION FOR FRIVOLOUS INVOCATION OF THE*
25 *STAY PROVISION.*—In any action in which a defendant acts

1 *pursuant to subsection (d) to stay the action, and the court*
2 *subsequently finds that the defendant's assertion that the*
3 *suit is a year 2000 action was frivolous and made for the*
4 *purpose of causing unnecessary delay, the court may award*
5 *sanctions to opposing parties in accordance with the provi-*
6 *sions of Rule 11 of the Federal Rules of Civil Procedure*
7 *or the equivalent applicable State rule.*

8 *(g) COMPUTATION OF TIME.—For purposes of this sec-*
9 *tion, the rules regarding computation of time shall be gov-*
10 *erned by the applicable Federal or State rules of civil proce-*
11 *dure.*

12 *(h) SPECIAL RULE FOR CLASS ACTIONS.—For the*
13 *purpose of applying this section to a year 2000 action that*
14 *is maintained as a class action in Federal or State court,*
15 *the requirements of the preceding subsections of this section*
16 *apply only to named plaintiffs in the class action.*

17 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION TO AVOID**
18 **UNNECESSARY YEAR 2000 ACTIONS.**

19 *(a) IN GENERAL.—(1) At any time during the 90-day*
20 *period specified in section 101(a), either party may request*
21 *the other to use alternative dispute resolution. If, based*
22 *upon that request, the parties enter into an agreement to*
23 *use alternative dispute resolution, they may also agree to*
24 *an extension of the 90-day period.*

1 (2) *At any time after expiration of the 90-day period*
2 *specified in section 101(a), whether before or after the filing*
3 *of a complaint, either party may request the other to use*
4 *alternative dispute resolution.*

5 (b) *PAYMENT OF MONEYS DUE.*—*If the parties resolve*
6 *their dispute through alternative dispute resolution as pro-*
7 *vided in subsection (a), the defendant shall pay all moneys*
8 *due within 30 days, unless another period of time is agreed*
9 *to by the parties or established by contract between the par-*
10 *ties.*

11 (c) *FORECLOSURE OF FURTHER PROCEEDINGS ON RE-*
12 *SOLVED ISSUES.*—*Resolution of the issues by the parties*
13 *prior to litigation through negotiation or alternative dis-*
14 *pute resolution shall foreclose any further proceedings with*
15 *respect to those issues.*

16 **SEC. 103. PLEADING REQUIREMENTS.**

17 (a) *APPLICATION WITH RULES OF CIVIL PROCE-*
18 *DURE.*—*This section applies exclusively to year 2000*
19 *claims and, except to the extent that this section requires*
20 *additional information to be contained in or attached to*
21 *pleadings, nothing in this section is intended to amend or*
22 *otherwise supersede applicable rules of Federal or State*
23 *civil procedure.*

24 (b) *NATURE AND AMOUNT OF DAMAGES.*—*With respect*
25 *to any year 2000 claim that seeks the award of money dam-*

1 *ages, the complaint shall state with particularity the nature*
2 *and amount of each element of damages, and the factual*
3 *basis for the damages calculation.*

4 *(c) MATERIAL DEFECTS.—With respect to any year*
5 *2000 claim in which the plaintiff alleges that a product*
6 *or service was defective, the complaint shall identify with*
7 *particularity the symptoms of the material defects and shall*
8 *state with particularity the facts supporting the conclusion*
9 *that the defects are material.*

10 *(d) REQUIRED STATE OF MIND.—With respect to any*
11 *year 2000 claim as to which the plaintiff may prevail only*
12 *on proof that the defendant acted with a particular state*
13 *of mind, the complaint shall, with respect to each element*
14 *of the year 2000 claim, state with particularity the facts*
15 *giving rise to a strong inference that the defendant acted*
16 *with the required state of mind.*

17 *(e) MOTION TO DISMISS; STAY OF DISCOVERY.—*

18 *(1) DISMISSAL FOR FAILURE TO MEET PLEADING*
19 *REQUIREMENTS.—In any year 2000 action, the court*
20 *shall, on the motion of any defendant, dismiss the*
21 *complaint without prejudice if the requirements of*
22 *subsection (a), (b), or (c) are not met with respect to*
23 *any year 2000 claim asserted therein.*

24 *(2) STAY OF DISCOVERY.—In any year 2000 ac-*
25 *tion, all discovery shall be stayed during the pendency*

1 *of any motion to dismiss, unless the court finds upon*
2 *the motion of any party that particularized discovery*
3 *is necessary to preserve evidence or prevent undue*
4 *prejudice to that party.*

5 (3) *PRESERVATION OF EVIDENCE.—*

6 (A) *IN GENERAL.—During the pendency of*
7 *any stay of discovery entered pursuant to this*
8 *subsection, unless otherwise ordered by the court,*
9 *any party to the action with actual notice of the*
10 *allegations contained in the complaint shall treat*
11 *all documents, data compilations (including elec-*
12 *tronically stored or recorded data), and tangible*
13 *objects that are in the custody or control of such*
14 *person and that are relevant to the allegations,*
15 *as if they were a subject of a continuing request*
16 *for production of documents from an opposing*
17 *party under applicable Federal or State rules of*
18 *civil procedure.*

19 (B) *SANCTION FOR WILLFUL VIOLATION.—A*
20 *party aggrieved by the willful failure of an op-*
21 *posing party to comply with subparagraph (A)*
22 *may apply to the court for an order awarding*
23 *appropriate sanctions.*

1 **SEC. 104. DUTY OF ALL PERSONS TO MITIGATE YEAR 2000**

2 **COMPUTER FAILURES AND RESULTING DAM-**

3 **AGES.**

4 *Damages awarded for any year 2000 claim shall ex-*
5 *clude compensation for damages the plaintiff could reason-*
6 *ably have avoided in light of any disclosure or other infor-*
7 *mation of which the plaintiff was, or reasonably should*
8 *have been, aware, including information made available by*
9 *the defendant to purchasers or users of the defendant's prod-*
10 *uct or services concerning means of remedying or avoiding*
11 *the year 2000 failure.*

12 **TITLE II—YEAR 2000 ACTIONS**
13 **INVOLVING CONTRACTS**

14 **SEC. 201. CERTAINTY OF CONTRACT TERMS FOR PREVEN-**
15 **TION OF YEAR 2000 DAMAGES.**

16 *(a) IN GENERAL.—Subject to subsection (b), in resolv-*
17 *ing any year 2000 claim, any written contractual term,*
18 *including a limitation or an exclusion of liability, or a dis-*
19 *claimer of warranty, shall be fully enforced unless the en-*
20 *forcement of that term would manifestly and directly con-*
21 *travene applicable State law embodied in any statute in*
22 *effect on January 1, 1999, specifically addressing that term.*

23 *(b) INTERPRETATION OF CONTRACT.—In resolving any*
24 *year 2000 claim as to which a contract to which subsection*
25 *(a) applies is silent with respect to a particular issue, the*
26 *interpretation of the contract with respect to that issue shall*

1 *be determined by applicable law in effect at the time the*
2 *contract was executed.*

3 **SEC. 202. APPLICATION OF EXISTING IMPOSSIBILITY OR**
4 **COMMERCIAL IMPRACTICABILITY DOC-**
5 **TRINES.**

6 (a) *DOCTRINE OF IMPOSSIBILITY AND COMMERCIAL*
7 *IMPRACTICABILITY.*—*With respect to any year 2000 claim*
8 *for breach or repudiation of contract, the applicability of*
9 *the doctrines of impossibility and commercial imprac-*
10 *tability shall be determined by the law in existence on*
11 *January 1, 1999. Nothing in this Act shall be construed*
12 *as limiting or impairing a party's right to assert defenses*
13 *based upon such doctrines.*

14 (b) *REASONABLE EFFORTS.*—*To the extent that impos-*
15 *sibility or commercial impracticability is raised as a de-*
16 *fense against a claim for breach or repudiation of contract,*
17 *the party asserting the defense shall be allowed to offer evi-*
18 *dence that its implementation of the contract, or its efforts*
19 *to implement the contract, were reasonable in light of the*
20 *circumstances.*

21 **SEC. 203. PROTECTION OF PERSONS FROM LIABILITY NOT**
22 **ANTICIPATED IN YEAR 2000 CONTRACTS.**

23 *With respect to any year 2000 claim involving a*
24 *breach of contract or a claim related to the contract, no*
25 *party may claim or be awarded any category of damages*

1 *unless such damages are allowed by the express terms of*
2 *the contract or, if the contract is silent on such damages,*
3 *by operation of the applicable Federal or State law that*
4 *governed interpretation of the contract at the time the con-*
5 *tract was entered into.*

6 **TITLE III—YEAR 2000 ACTIONS**
7 **INVOLVING TORT AND OTHER**
8 **NONCONTRACTUAL CLAIMS**

9 **SEC. 301. PROPORTIONATE LIABILITY.**

10 *(a) IN GENERAL.—A person against whom a final*
11 *judgment is entered with respect to a year 2000 claim, other*
12 *than a claim for breach or repudiation of contract, shall*
13 *be liable solely for the portion of the judgment that cor-*
14 *responds to the percentage of responsibility of that person,*
15 *as determined under subsection (b).*

16 *(b) DETERMINATION OF RESPONSIBILITY.—*

17 *(1) IN GENERAL.—With respect to any year 2000*
18 *claim, the court shall instruct the jury to answer spe-*
19 *cial interrogatories, or if there is no jury, shall make*
20 *findings, with respect to each defendant and plaintiff,*
21 *and each of the other persons claimed by any of the*
22 *parties to have caused or contributed to the loss in-*
23 *curring by the plaintiff, including (but not limited to)*
24 *persons who have entered into settlements with the*
25 *plaintiff or plaintiffs, concerning the percentage of re-*

1 *sponsibility of the defendant, the plaintiff, and each*
2 *such person, measured as a percentage of the total*
3 *fault of all persons who caused or contributed to the*
4 *total loss incurred by the plaintiff.*

5 (2) *CONTENTS OF SPECIAL INTERROGATORIES OR*
6 *FINDINGS.—The responses to interrogatories, or find-*
7 *ings, as appropriate, under paragraph (1) shall speci-*
8 *fy the total amount of damages that the plaintiff is*
9 *entitled to recover and the percentage of responsibility*
10 *of each person found to have caused or contributed to*
11 *the loss incurred by the plaintiff or plaintiffs.*

12 (3) *FACTORS FOR CONSIDERATION.—In deter-*
13 *mining the percentage of responsibility under this*
14 *subsection, the trier of fact shall consider—*

15 (A) *the nature of the conduct of each person*
16 *alleged to have caused or contributed to the loss*
17 *incurred by the plaintiff; and*

18 (B) *the nature and extent of the causal rela-*
19 *tionship between the conduct of each such person*
20 *and the damages incurred by the plaintiff or*
21 *plaintiffs.*

22 (4) *NONDISCLOSURE TO JURY.—The standard*
23 *for allocation of damages under paragraph (1) shall*
24 *not be disclosed to members of the jury.*

1 **SEC. 302. LIMITATION ON BYSTANDER LIABILITY FOR YEAR**
2 **2000 FAILURES.**

3 (a) *IN GENERAL.*—*With respect to any year 2000*
4 *claim for money damages in which—*

5 (1) *the defendant is not the manufacturer, seller,*
6 *or distributor of a product, or the provider of a serv-*
7 *ice, that suffers or causes the year 2000 failure at*
8 *issue,*

9 (2) *the plaintiff is not in substantial privity*
10 *with the defendant, and*

11 (3) *the defendant's actual or constructive aware-*
12 *ness of an actual or potential year 2000 failure is an*
13 *element of the claim under applicable law,*

14 *the defendant shall not be liable unless the plaintiff, in ad-*
15 *dition to establishing all other requisite elements of the*
16 *claim, proves by clear and convincing evidence that the de-*
17 *fendant actually knew, or recklessly disregarded a known*
18 *and substantial risk, that such failure would occur.*

19 (b) *SUBSTANTIAL PRIVITY.*—*For purposes of sub-*
20 *section (a)(2), a plaintiff and a defendant are in substan-*
21 *tial privity when, in a year 2000 claim arising out of the*
22 *performance of professional services, the plaintiff and the*
23 *defendant either have contractual relations with one an-*
24 *other or the plaintiff is a person who, prior to the defend-*
25 *ant's performance of such services, was specifically identi-*

1 *fied to and acknowledged by the defendant as a person for*
2 *whose special benefit the services were being performed.*

3 (c) *CERTAIN CLAIMS EXCLUDED.*—*For purposes of*
4 *subsection (a)(3), claims in which the defendant’s actual or*
5 *constructive awareness of an actual or potential year 2000*
6 *failure is an element of the claim under applicable law do*
7 *not include claims for negligence but do include claims such*
8 *as fraud, constructive fraud, breach of fiduciary duty, neg-*
9 *ligent misrepresentation, and interference with contract or*
10 *economic advantage.*

11 **SEC. 303. REASONABLE EFFORTS DEFENSE.**

12 *With respect to any year 2000 claim seeking money*
13 *damages, except with respect to claims asserting breach or*
14 *repudiation of contract—*

15 (1) *the fact that a year 2000 failure occurred in*
16 *an entity, facility, system, product, or component that*
17 *was within the control of the party against whom the*
18 *claim is asserted shall not constitute the sole basis for*
19 *recovery; and*

20 (2) *the party against whom the claim is asserted*
21 *shall be entitled to establish, as a complete defense to*
22 *the claim, that it took measures that were reasonable*
23 *under the circumstances to prevent the year 2000 fail-*
24 *ure from occurring or from causing the damages upon*
25 *which the claim is based.*

1 **SEC. 304. DAMAGES LIMITATION.**

2 (a) *YEAR 2000 RECOVERY FUND.*—*There is established*
3 *in the Treasury a Year 2000 Recovery Fund. In any year*
4 *2000 action in which punitive damages are awarded under*
5 *applicable law, including this Act, the entire amount of*
6 *such damages shall be paid into the Year 2000 Recovery*
7 *Fund. Amounts in the Fund shall be used for the assistance*
8 *of small businesses, State and local governments, and non-*
9 *profit organizations, that are affected by year 2000 failures.*

10 (b) *STANDARD FOR AWARDS.*—*With respect to any*
11 *year 2000 claim for which punitive damages may be*
12 *awarded under applicable law, the defendant shall not be*
13 *liable for punitive damages unless the plaintiff proves by*
14 *clear and convincing evidence that conduct carried out by*
15 *the defendant showed a conscious, flagrant indifference to*
16 *the rights or safety of others and was the proximate cause*
17 *of the harm or loss that is the subject of the year 2000 claim.*
18 *This requirement is in addition to any other requirement*
19 *in applicable law for the award of such damages.*

20 (c) *CAPS ON PUNITIVE DAMAGES.*—

21 (1) *IN GENERAL.*—*With respect to any year 2000*
22 *claim, if a defendant is found liable for punitive*
23 *damages, the amount of punitive damages that may*
24 *be awarded to a plaintiff shall not exceed the greater*
25 *of—*

1 (A) 3 times the amount awarded to the
2 plaintiff for compensatory damages; or

3 (B) \$250,000.

4 (2) *SPECIAL RULE.*—

5 (A) *IN GENERAL.*—Notwithstanding para-
6 graph (1), with respect to any year 2000 claim,
7 if the defendant is found liable for punitive dam-
8 ages and the defendant—

9 (i) is an individual whose net worth
10 does not exceed \$500,000,

11 (ii) is an owner of an unincorporated
12 business that has fewer than 25 full-time
13 employees, or

14 (iii) is—

15 (I) a partnership,

16 (II) corporation,

17 (III) association,

18 (IV) unit of local government, or

19 (V) organization,

20 that has fewer than 25 full-time employees,
21 the amount of punitive damages shall not exceed
22 the lesser of 3 times the amount awarded to the
23 plaintiff for compensatory damages, or \$250,000.

24 (B) *APPLICABILITY.*—For purposes of deter-
25 mining the applicability of this paragraph to a

1 *corporation, the number of employees of a sub-*
2 *subsidiary of a wholly owned corporation shall in-*
3 *clude all employees of a parent corporation or*
4 *any subsidiary of that parent corporation.*

5 (3) *APPLICATION OF LIMITATIONS BY THE*
6 *COURT.—The limitations contained in paragraphs (1)*
7 *and (2) shall be applied by the court and shall not*
8 *be disclosed to the jury.*

9 **SEC. 305. RECOVERY OF ECONOMIC DAMAGES FOR YEAR**
10 **2000 CLAIMS.**

11 (a) *LIMITATION ON RECOVERY OF ECONOMIC*
12 *LOSSES.—Subject to subsection (b), a plaintiff making a*
13 *year 2000 claim alleging a nonintentional tort may recover*
14 *economic losses only upon establishing, in addition to all*
15 *other elements of the claim under applicable law, that any*
16 *one of the following circumstances exists:*

17 (1) *The recovery of such losses is provided for in*
18 *a contract to which the plaintiff is a party.*

19 (2) *Such losses are incidental to a year 2000*
20 *claim based on damage to tangible personal or real*
21 *property caused by a year 2000 failure (other than*
22 *damage to property that is the subject of a contract*
23 *between the parties involved in the year 2000 claim).*

24 (b) *RECOVERY MUST BE PERMITTED UNDER APPLI-*
25 *CABLE LAW.—Economic losses shall be recoverable under*

1 *this section only if applicable Federal law, or applicable*
2 *State law embodied in statute or controlling judicial prece-*
3 *dent as of January 1, 1999, permits the recovery of such*
4 *losses.*

5 **SEC. 306. LIABILITY OF OFFICERS AND DIRECTORS.**

6 (a) *IN GENERAL.*—*A director, officer, or trustee of a*
7 *business or other organization (including a corporation,*
8 *unincorporated association, partnership, or nonprofit orga-*
9 *nization) shall not be personally liable with respect to any*
10 *year 2000 claim in his or her capacity as a director or*
11 *officer of the business or organization for an aggregate*
12 *amount that exceeds the greater of—*

13 (1) *\$100,000; or*

14 (2) *the amount of cash compensation received by*
15 *the director or officer from the business or organiza-*
16 *tion during the 12-month period immediately pre-*
17 *ceding the act or omission for which liability was im-*
18 *posed.*

19 (b) *RULE OF CONSTRUCTION.*—*Nothing in this section*
20 *shall be deemed to impose, or to permit the imposition of,*
21 *personal liability on any director, officer, or trustee in ex-*
22 *cess of the aggregate amount of liability to which such direc-*
23 *tor, officer, or trustee would be subject under applicable*
24 *State law in existence on January 1, 1999 (including any*
25 *charter or bylaw authorized by such State law).*

1 **TITLE IV—YEAR 2000 CLASS**
2 **ACTIONS**

3 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

4 (a) *IN GENERAL.*—*In any year 2000 action involving*
5 *a year 2000 claim that a product or service is defective,*
6 *the action may be maintained as a class action in Federal*
7 *or State court as to that claim only if it satisfies all other*
8 *prerequisites established by applicable Federal or State law*
9 *and the court also finds that the alleged defect in the prod-*
10 *uct or service was a material defect as to a majority of*
11 *the members of the class.*

12 (b) *DETERMINATION BY COURT.*—*As soon as prac-*
13 *ticable after the commencement of a year 2000 action in-*
14 *volving a year 2000 claim that a product or service is defec-*
15 *tive and that is brought as a class action, the court shall*
16 *determine by order whether the requirement set forth in sub-*
17 *section (a) is satisfied. An order under this subsection may*
18 *be conditional, and may be altered or amended before the*
19 *decision on the merits.*

20 **SEC. 402. NOTIFICATION.**

21 (a) *NOTICE BY MAIL.*—*In any year 2000 action that*
22 *is maintained as a class action, the court, in addition to*
23 *any other notice required by applicable Federal or State*
24 *law, shall direct notice of the action to each member of the*
25 *class by United States mail, return receipt requested. Per-*

1 *sons whose actual receipt of the notice is not verified by*
2 *the court or by counsel for one of the parties shall be ex-*
3 *cluded from the class unless those persons inform the court*
4 *in writing, on a date no later than the commencement of*
5 *trial or entry of judgment, that they wish to join the class.*

6 *(b) CONTENTS OF NOTICE.—In addition to any infor-*
7 *mation required by applicable Federal or State law, the no-*
8 *tice described in this subsection shall—*

9 *(1) concisely and clearly describe the nature of*
10 *the action;*

11 *(2) identify the jurisdiction whose law will gov-*
12 *ern the action and where the action is pending;*

13 *(3) identify any potential claims that class coun-*
14 *sel chose not to pursue so that the action would sat-*
15 *isfy class certification requirements;*

16 *(4) describe the fee arrangements with class*
17 *counsel, including the hourly fee being charged, or, if*
18 *it is a contingency fee, the percentage of the final*
19 *award which will be paid, including an estimate of*
20 *the total amount that would be paid if the requested*
21 *damages were to be granted; and*

22 *(5) describe the procedure for opting out of the*
23 *class.*

24 *(c) SETTLEMENT.—The parties to a year 2000 action*
25 *that is brought as a class action may not enter into, nor*

1 *request court approval of, any settlement or compromise be-*
2 *fore the class has been certified.*

3 **SEC. 403. DISMISSAL PRIOR TO CERTIFICATION.**

4 *Before determining whether to certify a class in a year*
5 *2000 action, the court may decide a motion to dismiss or*
6 *for summary judgment made by any party if the court con-*
7 *cludes that decision will promote the fair and efficient adju-*
8 *dication of the controversy and will not cause undue delay.*

9 **SEC. 404. FEDERAL JURISDICTION IN YEAR 2000 CLASS AC-**
10 **TIONS.**

11 *(a) JURISDICTION.—Except as provided in subsection*
12 *(b), a year 2000 action may be brought as a class action*
13 *in the United States district court or removed to the appro-*
14 *priate United States district court if the amount in con-*
15 *troversy is greater than the sum or value of \$1,000,000 (ex-*
16 *clusive of interest and costs), computed on the basis of all*
17 *claims to be determined in the action.*

18 *(b) EXCEPTION.—A year 2000 action shall not be*
19 *brought or removed as a class action under this section if—*

20 *(1)(A) the substantial majority of the members of*
21 *the proposed plaintiff class are citizens of a single*
22 *State of which the primary defendants are also citi-*
23 *zens; and*

24 *(B) the claims asserted will be governed pri-*
25 *marily by the laws of that State; or*

1 (2) *the primary defendants are States, State offi-*
2 *cials, or other governmental entities against whom the*
3 *United States district court may be foreclosed from*
4 *ordering relief.*

5 **TITLE V—CLIENT PROTECTION**
6 **IN CONNECTION WITH YEAR**
7 **2000 ACTIONS**

8 **SEC. 501. SCOPE.**

9 *This title applies to any year 2000 action asserted or*
10 *brought in Federal or State court.*

11 **SEC. 502. DEFINITIONS.**

12 *In this title:*

13 (1) *ATTORNEY.*—*the term “attorney” means any*
14 *natural person, professional law association, corpora-*
15 *tion, or partnership authorized under applicable*
16 *State law to practice law.*

17 (2) *ATTORNEY’S SERVICES.*—*The term “attor-*
18 *ney’s services” means the professional advice or coun-*
19 *seling of or representation by an attorney, but such*
20 *term shall not include other assistance incurred, di-*
21 *rectly or indirectly, in connection with an attorney’s*
22 *services, such as administrative or secretarial assist-*
23 *ance, overhead, travel expenses, witness fees, or prepa-*
24 *ration by a person other than the attorney of any*
25 *study, analysis, report, or test.*

1 (3) *CONTINGENT FEE.*—The term “contingent
2 *fee*” means the cost or price of an attorney’s services
3 determined by applying a specified percentage, which
4 may be a firm fixed percentage, a graduated or slid-
5 ing percentage, or any combination thereof, to the
6 amount of the settlement or judgment obtained.

7 (4) *HOURLY FEE.*—The term “hourly fee” means
8 the cost or price per hour of an attorney’s services.

9 (5) *RETAIN.*—The term “retain” means the act
10 of a client in engaging an attorney’s services, whether
11 by express or implied agreement, by seeking and ob-
12 taining the attorney’s services.

13 **SEC. 503. CONSUMER’S RIGHT TO UP-FRONT DISCLOSURE**
14 **OF INFORMATION REGARDING FEES AND SET-**
15 **TLEMENT PROPOSALS.**

16 *Before being retained by a client with respect to a year*
17 *2000 claim or a year 2000 action, an attorney shall disclose*
18 *to the client the client’s rights under this title and the cli-*
19 *ent’s right to receive a written statement of the information*
20 *described under sections 504 and 505.*

21 **SEC. 504. INFORMATION AFTER INITIAL MEETING.**

22 (a) *WRITTEN DISCLOSURE OF FEES.*—Within 30 days
23 *after the disclosure described under section 503, an attorney*
24 *retained by a client with respect to a year 2000 claim or*

1 *a year 2000 action shall provide a written statement to the*
2 *client setting forth—*

3 *(1) in the case of an attorney retained on an*
4 *hourly basis, the attorney's hourly fee for services in*
5 *pursuing the year 2000 claim or year 2000 action*
6 *and any conditions, limitations, restrictions, or other*
7 *qualifications on the fee, including likely expenses*
8 *and the client's obligation for those expenses; and*

9 *(2) in the case of an attorney retained on a con-*
10 *tingent fee basis, the attorney's contingent fee for serv-*
11 *ices in pursuing the year 2000 claim or year 2000 ac-*
12 *tion and any conditions, limitations, restrictions, or*
13 *other qualifications on the fee, including likely ex-*
14 *penses and the client's obligation for those expenses.*

15 *(b) CONSUMER'S RIGHT TO TIMELY UPDATED INFOR-*
16 *MATION ABOUT FEES.—In addition to the requirements*
17 *contained in subsection (a), in the case of an attorney re-*
18 *tained on an hourly basis, the attorney shall also render*
19 *regular statements (at least once each 90 days) to the client*
20 *containing a description of hourly charges and expenses in-*
21 *curred in the pursuit of the client's year 2000 claim or year*
22 *2000 action by each attorney assigned to the client's matter.*

1 **SEC. 505. CONSUMER'S RIGHT TO TIMELY UPDATED INFOR-**
2 **MATION ABOUT SETTLEMENT PROPOSALS**
3 **AND DETAILED STATEMENT OF HOURS AND**
4 **FEES.**

5 *An attorney retained by a client with respect to a year*
6 *2000 claim or a year 2000 action shall advise the client*
7 *of all written settlement offers to the client and of the attor-*
8 *ney's estimate of the likelihood of achieving a more or less*
9 *favorable resolution to the year 2000 claim or year 2000*
10 *action, the likely timing of such resolution, and the likely*
11 *attorney's fees and expenses required to obtain such a reso-*
12 *lution. An attorney retained by a client with respect to a*
13 *year 2000 claim or a year 2000 action shall, within a rea-*
14 *sonable time not later than 60 days after the date on which*
15 *the year 2000 claim or year 2000 action is finally settled*
16 *or adjudicated, provide a written statement to the client*
17 *containing—*

18 *(1) in the case of an attorney retained on an*
19 *hourly basis, the actual number of hours expended by*
20 *each attorney on behalf of the client in connection*
21 *with the year 2000 claim or year 2000 action, the at-*
22 *torney's hourly rate, and the total amount of hourly*
23 *fees; and*

24 *(2) in the case of an attorney retained on a con-*
25 *tingent fee basis, the total contingent fee for the attor-*

1 *ney's services in connection with the year 2000 claim*
2 *or year 2000 action.*

3 **SEC. 506. CLASS ACTIONS.**

4 *An attorney representing a class or a defendant in a*
5 *year 2000 action maintained as a class action shall make*
6 *the disclosures required under this title to the presiding*
7 *judge, in addition to making such disclosures to each named*
8 *representative of the class. The presiding judge shall, at the*
9 *outset of the year 2000 action, determine a reasonable attor-*
10 *ney's fee by determining the appropriate hourly rate and*
11 *the maximum percentage of the recovery to be paid in attor-*
12 *ney's fees. Notwithstanding any other provision of law or*
13 *agreement to the contrary, the presiding judge shall award*
14 *attorney's fees only pursuant to this title.*

15 **SEC. 507. AWARD OF REASONABLE COSTS AND ATTORNEY'S**

16 **FEES AFTER AN OFFER OF SETTLEMENT.**

17 *(a) OFFER OF SETTLEMENT.—With respect to any*
18 *year 2000 claim, any party may, at any time not less than*
19 *10 days before trial, serve upon any adverse party a written*
20 *offer to settle the year 2000 claim for money or property,*
21 *including a motion to dismiss the claim, and to enter into*
22 *a stipulation dismissing the claim or allowing judgment*
23 *to be entered according to the terms of the offer. Any such*
24 *offer, together with proof of service thereof, shall be filed*
25 *with the clerk of the court.*

1 (b) *ACCEPTANCE OF OFFER.*—If the party receiving an
2 offer under subsection (a) serves written notice on the offeror
3 that the offer is accepted, either party may then file with
4 the clerk of the court the notice of acceptance, together with
5 proof of service thereof.

6 (c) *FURTHER OFFERS NOT PRECLUDED.*—The fact
7 that an offer under subsection (a) is made but not accepted
8 does not preclude a subsequent offer under subsection (a).
9 Evidence of an offer is not admissible for any purpose ex-
10 cept in proceedings to enforce a settlement, or to determine
11 costs and expenses under this section.

12 (d) *EXEMPTION OF CLAIMS.*—At any time before judg-
13 ment is entered, the court, upon its own motion or upon
14 the motion of any party, may exempt from this section any
15 year 2000 claim that the court finds presents a question
16 of law or fact that is novel and important and that substan-
17 tially affects nonparties. If a claim is exempted from this
18 section, all offers made by any party under subsection (a)
19 with respect to that claim shall be void and have no effect.

20 (e) *PETITION FOR PAYMENT OF COSTS, ETC.*—If all
21 offers made by a party under subsection (a) with respect
22 to a year 2000 claim, including any motion to dismiss the
23 claim, are not accepted and the dollar amount of the judg-
24 ment, verdict, or order that is finally issued (exclusive of
25 costs, expenses, and attorneys' fees incurred after judgment

1 *or trial) with respect to the year 2000 claim is not more*
2 *favorable to the offeree with respect to the year 2000 claim*
3 *than the last such offer, the offeror may file with the court,*
4 *within 10 days after the final judgment, verdict, or order*
5 *is issued, a petition for payment of costs and expenses, in-*
6 *cluding attorneys' fees, incurred with respect to the year*
7 *2000 claim from the date the last such offer was made or,*
8 *if the offeree made an offer under this section, from the date*
9 *the last such offer by the offeree was made.*

10 *(f) ORDER TO PAY COSTS, ETC.—If the court finds,*
11 *pursuant to a petition filed under subsection (e) with re-*
12 *spect to a year 2000 claim, that the dollar amount of the*
13 *judgment, verdict, or order that is finally issued is not more*
14 *favorable to the offeree with respect to the year 2000 claim*
15 *than the last such offer, the court shall order the offeree to*
16 *pay the offeror's costs and expenses, including attorneys'*
17 *fees, incurred with respect to the year 2000 claim from the*
18 *date the last offer was made or, if the offeree made an offer*
19 *under this section, from the date the last such offer by the*
20 *offeree was made, unless the court finds that requiring the*
21 *payment of such costs and expenses would be manifestly un-*
22 *just.*

23 *(g) AMOUNT OF ATTORNEY'S FEES.—Attorney's fees*
24 *under subsection (f) shall be a reasonable attorney's fee at-*
25 *tributable to the year 2000 claim involved, calculated on*

1 *the basis of an hourly rate which may not exceed that which*
2 *the court considers acceptable in the community in which*
3 *the attorney practices law, taking into account the attor-*
4 *ney's qualifications and experience and the complexity of*
5 *the case, except that the attorney's fees under subsection (f)*
6 *may not exceed—*

7 (A) *the actual cost incurred by the offeree for an*
8 *attorney's fee payable to an attorney for services in*
9 *connection with the year 2000 claim; or*

10 (B) *if no such cost was incurred by the offeree*
11 *due to a contingency fee agreement, a reasonable cost*
12 *that would have been incurred by the offeree for an*
13 *attorney's noncontingent fee payable to an attorney*
14 *for services in connection with the year 2000 claim.*

15 (h) *INAPPLICABILITY TO EQUITABLE REMEDIES.—*
16 *This section does not apply to any claim seeking an equi-*
17 *table remedy.*

18 (i) *INAPPLICABILITY TO CLASS ACTIONS.—This sec-*
19 *tion does not apply with respect to a year 2000 action*
20 *brought as a class action.*

21 **SEC. 508. ENFORCEMENT OF CONSUMER PROTECTION**

22 **RULES IN YEAR 2000 CLAIMS AND ACTIONS.**

23 *A client whose attorney fails to comply with this title*
24 *may file a civil action for damages in the court in which*
25 *the year 2000 claim or year 2000 action was filed or could*

- 1 *have been filed or other court of competent jurisdiction. The*
- 2 *remedy provided by this section is in addition to any other*
- 3 *available remedy or penalty.*