

In the Senate of the United States,

June 15, 1999.

Resolved, That the bill from the House of Representatives (H.R. 775) entitled “An Act 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.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; TABLE OF SECTIONS.***

2 (a) *SHORT TITLE*.—*This Act may be cited as the “Y2K*
3 *Act”.*

4 (b) *TABLE OF SECTIONS*.—*The table of sections for this*
5 *Act is as follows:*

Sec. 1. Short title; table of sections.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

Sec. 4. Application of Act.

Sec. 5. Punitive damages limitations.

Sec. 6. Proportionate liability.

Sec. 7. Prelitigation notice.

Sec. 8. Pleading requirements.

Sec. 9. Duty to mitigate.

- Sec. 10. Application of existing impossibility or commercial impracticability doctrines.*
- Sec. 11. Damages limitation by contract.*
- Sec. 12. Damages in tort claims.*
- Sec. 13. State of mind; bystander liability; control.*
- Sec. 14. Appointment of special masters or magistrate judges for Y2K actions.*
- Sec. 15. Y2K actions as class actions.*
- Sec. 16. Applicability of State law.*
- Sec. 17. Admissible evidence ultimate issue in State courts.*
- Sec. 18. Suspension of penalties for certain year 2000 failures by small business concerns.*

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) *FINDINGS.—The Congress finds that:*

3 (1)(A) *Many information technology systems, de-*
 4 *vices, and programs are not capable of recognizing*
 5 *certain dates in 1999 and after December 31, 1999,*
 6 *and will read dates in the year 2000 and thereafter*
 7 *as if those dates represent the year 1900 or thereafter*
 8 *or will fail to process dates after December 31, 1999.*

9 (B) *If not corrected, the problem described in*
 10 *subparagraph (A) and resulting failures could inca-*
 11 *pacitate systems that are essential to the functioning*
 12 *of markets, commerce, consumer products, utilities,*
 13 *Government, and safety and defense systems, in the*
 14 *United States and throughout the world.*

15 (2) *It is in the national interest that producers*
 16 *and users of technology products concentrate their at-*
 17 *tention and resources in the time remaining before*
 18 *January 1, 2000, on assessing, fixing, testing, and de-*
 19 *veloping contingency plans to address any and all*
 20 *outstanding year 2000 computer date-change prob-*

1 *lems, so as to minimize possible disruptions associ-*
2 *ated with computer failures.*

3 *(3)(A) Because year 2000 computer date-change*
4 *problems may affect virtually all businesses and other*
5 *users of technology products to some degree, there is*
6 *a substantial likelihood that actual or potential year*
7 *2000 failures will prompt a significant volume of liti-*
8 *gation, much of it insubstantial.*

9 *(B) The litigation described in subparagraph (A)*
10 *would have a range of undesirable effects, including*
11 *the following:*

12 *(i) It would threaten to waste technical and*
13 *financial resources that are better devoted to cur-*
14 *ing year 2000 computer date-change problems*
15 *and ensuring that systems remain or become*
16 *operational.*

17 *(ii) It could threaten the network of valued*
18 *and trusted business and customer relationships*
19 *that are important to the effective functioning of*
20 *the national economy.*

21 *(iii) It would strain the Nation's legal sys-*
22 *tem, causing particular problems for the small*
23 *businesses and individuals who already find that*
24 *system inaccessible because of its complexity and*
25 *expense.*

1 (iv) *The delays, expense, uncertainties, loss*
2 *of control, adverse publicity, and animosities*
3 *that frequently accompany litigation of business*
4 *disputes could exacerbate the difficulties associ-*
5 *ated with the date change and work against the*
6 *successful resolution of those difficulties.*

7 (4) *It is appropriate for the Congress to enact*
8 *legislation to assure that Y2K problems do not unnec-*
9 *essarily disrupt interstate commerce or create unnec-*
10 *essary caseloads in Federal courts and to provide ini-*
11 *tiatives to help businesses prepare and be in a posi-*
12 *tion to withstand the potentially devastating eco-*
13 *nomic impact of Y2K.*

14 (5) *Resorting to the legal system for resolution of*
15 *Y2K problems is not feasible for many businesses and*
16 *individuals who already find the legal system inacces-*
17 *sible, particularly small businesses and individuals*
18 *who already find the legal system inaccessible, because*
19 *of its complexity and expense.*

20 (6) *The delays, expense, uncertainties, loss of*
21 *control, adverse publicity, and animosities that fre-*
22 *quently accompany litigation of business disputes can*
23 *only exacerbate the difficulties associated with the*
24 *Y2K date change, and work against the successful res-*
25 *olution of those difficulties.*

1 (7) *Concern about the potential for liability—in*
2 *particular, concern about the substantial litigation*
3 *expense associated with defending against even the*
4 *most insubstantial lawsuits—is prompting many per-*
5 *sons and businesses with technical expertise to avoid*
6 *projects aimed at curing year 2000 computer date-*
7 *change problems.*

8 (8) *A proliferation of frivolous Y2K lawsuits by*
9 *opportunistic parties may further limit access to*
10 *courts by straining the resources of the legal system*
11 *and depriving deserving parties of their legitimate*
12 *rights to relief.*

13 (9) *Congress encourages businesses to approach*
14 *their Y2K disputes responsibly, and to avoid unneces-*
15 *sary, time-consuming and costly litigation about Y2K*
16 *failures, particularly those that are not material.*
17 *Congress supports good faith negotiations between*
18 *parties when there is a dispute over a Y2K problem,*
19 *and, if necessary, urges the parties to enter into vol-*
20 *untary, nonbinding mediation rather than litigation.*

21 (b) *PURPOSES.—Based upon the power of the Congress*
22 *under Article I, Section 8, Clause 3 of the Constitution of*
23 *the United States, the purposes of this Act are—*

24 (1) *to establish uniform legal standards that give*
25 *all businesses and users of technology products reason-*

1 *able incentives to solve Y2K computer date-change*
2 *problems before they develop;*

3 *(2) to encourage continued Y2K remediation and*
4 *testing efforts by providers, suppliers, customers, and*
5 *other contracting partners;*

6 *(3) to encourage private and public parties alike*
7 *to resolve Y2K disputes by alternative dispute mecha-*
8 *nisms in order to avoid costly and time-consuming*
9 *litigation, to initiate those mechanisms as early as*
10 *possible, and to encourage the prompt identification*
11 *and correction of Y2K problems; and*

12 *(4) to lessen the burdens on interstate commerce*
13 *by discouraging insubstantial lawsuits while pre-*
14 *serving the ability of individuals and businesses that*
15 *have suffered real injury to obtain complete relief.*

16 **SEC. 3. DEFINITIONS.**

17 *In this Act:*

18 *(1) Y2K ACTION.—The term “Y2K action”—*

19 *(A) means a civil action commenced in any*
20 *Federal or State court, or an agency board of*
21 *contract appeal proceeding, in which the plain-*
22 *tiff’s alleged harm or injury resulted from a Y2K*
23 *failure;*

24 *(B) includes a civil action commenced in*
25 *any Federal or State court by a governmental*

1 *entity when acting in a commercial or con-*
2 *tracting capacity; but*

3 *(C) does not include an action brought by*
4 *a governmental entity acting in a regulatory, su-*
5 *pervisory, or enforcement capacity.*

6 *(2) Y2K FAILURE.—The term “Y2K failure”*
7 *means failure by any device or system (including any*
8 *computer system and any microchip or integrated*
9 *circuit embedded in another device or product), or*
10 *any software, firmware, or other set or collection of*
11 *processing instructions to process, to calculate, to*
12 *compare, to sequence, to display, to store, to transmit,*
13 *or to receive year-2000 date-related data, including*
14 *failures—*

15 *(A) to deal with or account for transitions*
16 *or comparisons from, into, and between the years*
17 *1999 and 2000 accurately;*

18 *(B) to recognize or accurately to process*
19 *any specific date in 1999, 2000, or 2001; or*

20 *(C) accurately to account for the year*
21 *2000’s status as a leap year, including recogni-*
22 *tion and processing of the correct date on Feb-*
23 *ruary 29, 2000.*

24 *(3) GOVERNMENT ENTITY.—The term “govern-*
25 *ment entity” means an agency, instrumentality, or*

1 *other entity of Federal, State, or local government*
2 *(including multijurisdictional agencies, instrumental-*
3 *ities, and entities).*

4 (4) *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 according to its speci-*
9 *fications. The term “material defect” does not include*
10 *a defect that—*

11 (A) *has an insignificant or de minimis ef-*
12 *fect on the operation or functioning of an item*
13 *or computer program;*

14 (B) *affects only a component of an item or*
15 *program that, as a whole, substantially operates*
16 *or functions as designed; or*

17 (C) *has an insignificant or de minimis ef-*
18 *fect on the efficacy of the service provided.*

19 (5) *PERSONAL INJURY.*—*The term “personal in-*
20 *jury” means physical injury to a natural person,*
21 *including—*

22 (A) *death as a result of a physical injury;*

23 *and*

1 (B) *mental suffering, emotional distress, or*
2 *similar injuries suffered by that person in con-*
3 *nection with a physical injury.*

4 (6) *STATE.*—*The term “State” means any State*
5 *of the United States, the District of Columbia, the*
6 *Commonwealth of Puerto Rico, the Northern Mariana*
7 *Islands, the United States Virgin Islands, Guam,*
8 *American Samoa, and any other territory or posses-*
9 *sion of the United States, and any political subdivi-*
10 *sion thereof.*

11 (7) *CONTRACT.*—*The term “contract” means a*
12 *contract, tariff, license, or warranty.*

13 (8) *ALTERNATIVE DISPUTE RESOLUTION.*—*The*
14 *term “alternative dispute resolution” means any*
15 *process or proceeding, other than adjudication by a*
16 *court or in an administrative proceeding, to assist in*
17 *the resolution of issues in controversy, through proc-*
18 *esses such as early neutral evaluation, mediation,*
19 *minitrial, and arbitration.*

20 **SEC. 4. APPLICATION OF ACT.**

21 (a) *GENERAL RULE.*—*This Act applies to any Y2K*
22 *action brought in a State or Federal court after January*
23 *1, 1999, for a Y2K failure occurring before January 1,*
24 *2003, including any appeal, remand, stay, or other judicial,*

1 *administrative, or alternative dispute resolution proceeding*
2 *in such an action.*

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

8 (c) *CLAIMS FOR PERSONAL INJURY OR WRONGFUL*
9 *DEATH EXCLUDED.—This Act does not apply to a claim*
10 *for personal injury or for wrongful death.*

11 (d) *CONTRACT PRESERVATION.—*

12 (1) *IN GENERAL.—Subject to paragraph (2), in*
13 *any Y2K action any written contractual term, in-*
14 *cluding a limitation or an exclusion of liability, or*
15 *a disclaimer of warranty, shall be strictly enforced*
16 *unless the enforcement of that term would manifestly*
17 *and directly contravene applicable State law em-*
18 *bodied in any statute in effect on January 1, 1999,*
19 *specifically addressing that term.*

20 (2) *INTERPRETATION OF CONTRACT.—In any*
21 *Y2K action in which a contract to which paragraph*
22 *(1) applies is silent as to a particular issue, the inter-*
23 *pretation of the contract as to that issue shall be de-*
24 *termined by applicable law in effect at the time the*
25 *contract was executed.*

1 (e) *PREEMPTION OF STATE LAW.*—*This Act supersedes*
 2 *State law to the extent that it establishes a rule of law ap-*
 3 *plicable to a Y2K action that is inconsistent with State law,*
 4 *but nothing in this Act implicates, alters, or diminishes the*
 5 *ability of a State to defend itself against any claim on the*
 6 *basis of sovereign immunity.*

7 (f) *APPLICATION WITH YEAR 2000 INFORMATION AND*
 8 *READINESS DISCLOSURE ACT.*—*Nothing in this Act super-*
 9 *sedes any provision of the Year 2000 Information and*
 10 *Readiness Disclosure Act.*

11 (g) *APPLICATION TO ACTIONS BROUGHT BY A GOVERN-*
 12 *MENTAL ENTITY.*—

13 (1) *IN GENERAL.*—*To the extent provided in this*
 14 *subsection, this Act shall apply to an action brought*
 15 *by a governmental entity described in section 3(1)(C).*

16 (2) *DEFINITIONS.*—*In this subsection:*

17 (A) *DEFENDANT.*—

18 (i) *IN GENERAL.*—*The term “defend-*
 19 *ant” includes a State or local government.*

20 (ii) *STATE.*—*The term “State” means*
 21 *each of the several States of the United*
 22 *States, the District of Columbia, the Com-*
 23 *monwealth of Puerto Rico, the Virgin Is-*
 24 *lands, Guam, American Samoa, and the*

1 *Commonwealth of the Northern Mariana Is-*
2 *lands.*

3 (iii) *LOCAL GOVERNMENT.*—*The term*
4 *“local government” means—*

5 (I) *any county, city, town, town-*
6 *ship, parish, village, or other general*
7 *purpose political subdivision of a*
8 *State; and*

9 (II) *any combination of political*
10 *subdivisions described in subclause (I)*
11 *recognized by the Secretary of Housing*
12 *and Urban Development.*

13 (B) *Y2K UPSET.*—*The term “Y2K upset”—*

14 (i) *means an exceptional incident in-*
15 *volving temporary noncompliance with ap-*
16 *plicable federally enforceable measurement*
17 *or reporting requirements because of factors*
18 *related to a Y2K failure that are beyond the*
19 *reasonable control of the defendant charged*
20 *with compliance; and*

21 (ii) *does not include—*

22 (I) *noncompliance with applicable*
23 *federally enforceable requirements that*
24 *constitutes or would create an immi-*

1 *ment threat to public health, safety, or*
2 *the environment;*

3 *(II) noncompliance with applica-*
4 *ble federally enforceable requirements*
5 *that provide for the safety and sound-*
6 *ness of the banking or monetary sys-*
7 *tem, including the protection of deposi-*
8 *tors;*

9 *(III) noncompliance to the extent*
10 *caused by operational error or neg-*
11 *ligence;*

12 *(IV) lack of reasonable preventa-*
13 *tive maintenance; or*

14 *(V) lack of preparedness for Y2K.*

15 *(3) CONDITIONS NECESSARY FOR A DEMONSTRA-*
16 *TION OF A Y2K UPSET.—A defendant who wishes to*
17 *establish the affirmative defense of Y2K upset shall*
18 *demonstrate, through properly signed, contempora-*
19 *neous operating logs, or other relevant evidence that—*

20 *(A) the defendant previously made a good*
21 *faith effort to effectively remediate Y2K prob-*
22 *lems;*

23 *(B) a Y2K upset occurred as a result of a*
24 *Y2K system failure or other Y2K emergency;*

1 (C) noncompliance with the applicable fed-
2 erally enforceable measurement or reporting re-
3 quirement was unavoidable in the face of a Y2K
4 emergency or was intended to prevent the dis-
5 ruption of critical functions or services that
6 could result in the harm of life or property;

7 (D) upon identification of noncompliance
8 the defendant invoking the defense began imme-
9 diate actions to remediate any violation of feder-
10 ally enforceable measurement or reporting re-
11 quirements; and

12 (E) the defendant submitted notice to the
13 appropriate Federal regulatory authority of a
14 Y2K upset within 72 hours from the time that
15 it became aware of the upset.

16 (4) GRANT OF A Y2K UPSET DEFENSE.—Subject
17 to the other provisions of this subsection, the Y2K
18 upset defense shall be a complete defense to any action
19 brought as a result of noncompliance with federally
20 enforceable measurement or reporting requirements
21 for any defendant who establishes by a preponderance
22 of the evidence that the conditions set forth in para-
23 graph (3) are met.

24 (5) LENGTH OF Y2K UPSET.—The maximum al-
25 lowable length of the Y2K upset shall be not more

1 *than 15 days beginning on the date of the upset un-*
2 *less granted specific relief by the appropriate regu-*
3 *latory authority.*

4 (6) *VIOLATION OF A Y2K UPSET.—Fraudulent*
5 *use of the Y2K upset defense provided for in this sub-*
6 *section shall be subject to penalties provided in section*
7 *1001 of title 18, United States Code.*

8 (7) *EXPIRATION OF DEFENSE.—The Y2K upset*
9 *defense may not be asserted for a Y2K upset occurring*
10 *after June 30, 2000.*

11 (h) *CREDIT PROTECTION FROM YEAR 2000 FAIL-*
12 *URES.—*

13 (1) *IN GENERAL.—No person who transacts busi-*
14 *ness on matters directly or indirectly affecting mort-*
15 *gages, credit accounts, banking, or other financial*
16 *transactions shall cause or permit a foreclosure, de-*
17 *fault, or other adverse action against any other per-*
18 *son as a result of the improper or incorrect trans-*
19 *mission or inability to cause transaction to occur,*
20 *which is caused directly or indirectly by an actual or*
21 *potential Y2K failure that results in an inability to*
22 *accurately or timely process any information or data,*
23 *including data regarding payments and transfers.*

24 (2) *SCOPE.—The prohibition of such adverse ac-*
25 *tion to enforce obligations referred to in paragraph*

1 (1) includes but is not limited to mortgages, con-
2 tracts, landlord-tenant agreements, consumer credit
3 obligations, utilities, and banking transactions.

4 (3) *ADVERSE CREDIT INFORMATION.*—The prohi-
5 bition on adverse action in paragraph (1) includes
6 the entry of any negative credit information to any
7 credit reporting agency, if the negative credit infor-
8 mation is due directly or indirectly by an actual or
9 potential disruption of the proper processing of finan-
10 cial responsibilities and information, or the inability
11 of the consumer to cause payments to be made to
12 creditors where such inability is due directly or indi-
13 rectly to an actual or potential Y2K failure.

14 (4) *ACTIONS MAY RESUME AFTER PROBLEM IS*
15 *FIXED.*—No enforcement or other adverse action pro-
16 hibited by paragraph (1) shall resume until the obli-
17 gor has a reasonable time after the full restoration of
18 the ability to regularly receive and dispense data nec-
19 essary to perform the financial transaction required
20 to fulfill the obligation.

21 (5) *SUBSECTION DOES NOT APPLY TO NON-Y2K-*
22 *RELATED PROBLEMS.*—This subsection shall not affect
23 transactions upon which a default has occurred prior
24 to a Y2K failure that disrupts financial or data
25 transfer operations of either party.

1 (6) *ENFORCEMENT OF OBLIGATIONS MERELY*
 2 *TOLLED.*—*This subsection delays but does not prevent*
 3 *the enforcement of financial obligations.*

4 **SEC. 5. PUNITIVE DAMAGES LIMITATIONS.**

5 (a) *IN GENERAL.*—*In any Y2K action in which puni-*
 6 *tive damages are permitted by applicable law, the defendant*
 7 *shall not be liable for punitive damages unless the plaintiff*
 8 *proves by clear and convincing evidence that the applicable*
 9 *standard for awarding damages has been met.*

10 (b) *CAPS ON PUNITIVE DAMAGES.*—

11 (1) *IN GENERAL.*—*Subject to the evidentiary*
 12 *standard established by subsection (a), punitive dam-*
 13 *ages permitted under applicable law against a defend-*
 14 *ant described in paragraph (2) in a Y2K action may*
 15 *not exceed the lesser of—*

16 (A) *3 times the amount awarded for com-*
 17 *pensatory damages; or*

18 (B) *\$250,000.*

19 (2) *DEFENDANT DESCRIBED.*—*A defendant de-*
 20 *scribed in this paragraph is a defendant—*

21 (A) *who—*

22 (i) *is sued in his or her capacity as an*
 23 *individual; and*

24 (ii) *whose net worth does not exceed*
 25 *\$500,000; or*

1 (B) that is an unincorporated business, a
 2 partnership, corporation, association, or organi-
 3 zation with fewer than 50 full-time employees.

4 (3) NO CAP IF INJURY SPECIFICALLY IN-
 5 TENDED.—Paragraph (1) does not apply if the plain-
 6 tiff establishes by clear and convincing evidence that
 7 the defendant acted with specific intent to injure the
 8 plaintiff.

9 (c) GOVERNMENT ENTITIES.—Punitive damages in a
 10 Y2K action may not be awarded against a government enti-
 11 ty.

12 **SEC. 6. PROPORTIONATE LIABILITY.**

13 (a) IN GENERAL.—Except as provided in subsections
 14 (b) and (c), a person against whom a final judgment is
 15 entered in a Y2K action shall be liable solely for the portion
 16 of the judgment that corresponds to the relative and propor-
 17 tional responsibility of that person. In determining the per-
 18 centage of responsibility of any defendant, the trier of fact
 19 shall determine that percentage as a percentage of the total
 20 fault of all persons, including the plaintiff, who caused or
 21 contributed to the total loss incurred by the plaintiff.

22 (b) PROPORTIONATE LIABILITY.—

23 (1) DETERMINATION OF RESPONSIBILITY.—In
 24 any Y2K action, the court shall instruct the jury to
 25 answer special interrogatories, or, if there is no jury,

1 *the court shall make findings with respect to each de-*
2 *fendant, including defendants who have entered into*
3 *settlements with the plaintiff or plaintiffs,*
4 *concerning—*

5 *(A) the percentage of responsibility, if any,*
6 *of each defendant, measured as a percentage of*
7 *the total fault of all persons who caused or con-*
8 *tributed to the loss incurred by the plaintiff; and*

9 *(B) if alleged by the plaintiff, whether the*
10 *defendant (other than a defendant who has en-*
11 *tered into a settlement agreement with the plain-*
12 *tiff)—*

13 *(i) acted with specific intent to injure*
14 *the plaintiff; or*

15 *(ii) knowingly committed fraud.*

16 *(2) CONTENTS OF SPECIAL INTERROGATORIES OR*
17 *FINDINGS.—The responses to interrogatories or find-*
18 *ings under paragraph (1) shall specify the total*
19 *amount of damages that the plaintiff is entitled to re-*
20 *cover and the percentage of responsibility of each de-*
21 *fendant found to have caused or contributed to the*
22 *loss incurred by the plaintiff.*

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

1 (A) the nature of the conduct of each person
 2 found to have caused or contributed to the loss
 3 incurred by the plaintiff; and

4 (B) the nature and extent of the causal rela-
 5 tionship between the conduct of each such person
 6 and the damages incurred by the plaintiff.

7 (c) *JOINT LIABILITY FOR SPECIFIC INTENT OR*
 8 *FRAUD.*—

9 (1) *IN GENERAL.*—Notwithstanding subsection
 10 (a), the liability of a defendant in a Y2K action is
 11 joint and several if the trier of fact specifically deter-
 12 mines that the defendant—

13 (A) acted with specific intent to injure the
 14 plaintiff; or

15 (B) knowingly committed fraud.

16 (2) *FRAUD; RECKLESSNESS.*—

17 (A) *KNOWING COMMISSION OF FRAUD DE-*
 18 *SCRIBED.*—For purposes of subsection
 19 (b)(1)(B)(ii) and paragraph (1)(B) of this sub-
 20 section, a defendant knowingly committed fraud
 21 if the defendant—

22 (i) made an untrue statement of a ma-
 23 terial fact, with actual knowledge that the
 24 statement was false;

1 (ii) omitted a fact necessary to make
 2 the statement not be misleading, with actual
 3 knowledge that, as a result of the omission,
 4 the statement was false; and

5 (iii) knew that the plaintiff was rea-
 6 sonably likely to rely on the false statement.

7 (B) *RECKLESSNESS*.—For purposes of sub-
 8 section (b)(1)(B) and paragraph (1) of this sub-
 9 section, reckless conduct by the defendant does
 10 not constitute either a specific intent to injure,
 11 or the knowing commission of fraud, by the de-
 12 fendant.

13 (3) *RIGHT TO CONTRIBUTION NOT AFFECTED*.—
 14 Nothing in this section affects the right, under any
 15 other law, of a defendant to contribution with respect
 16 to another defendant found under subsection
 17 (b)(1)(B), or determined under paragraph (1)(B) of
 18 this subsection, to have acted with specific intent to
 19 injure the plaintiff or to have knowingly committed
 20 fraud.

21 (d) *SPECIAL RULES*.—

22 (1) *UNCOLLECTIBLE SHARE*.—

23 (A) *IN GENERAL*.—Notwithstanding sub-
 24 section (a), if, upon motion made not later than
 25 6 months after a final judgment is entered in

1 *any Y2K action, the court determines that all or*
2 *part of the share of the judgment against a de-*
3 *fendant for compensatory damages is not collect-*
4 *ible against that defendant, then each other de-*
5 *fendant in the action is liable for the*
6 *uncollectible share as follows:*

7 *(i) PERCENTAGE OF NET WORTH.—The*
8 *other defendants are jointly and severally*
9 *liable for the uncollectible share if the plain-*
10 *tiff establishes that—*

11 *(I) the plaintiff is an individual*
12 *whose recoverable damages under the*
13 *final judgment are equal to more than*
14 *10 percent of the net worth of the*
15 *plaintiff; and*

16 *(II) the net worth of the plaintiff*
17 *is less than \$200,000.*

18 *(ii) OTHER PLAINTIFFS.—For a plain-*
19 *tiff not described in clause (i), each of the*
20 *other defendants is liable for the*
21 *uncollectible share in proportion to the per-*
22 *centage of responsibility of that defendant,*
23 *except that the total liability of a defendant*
24 *under this clause may not exceed 50 percent*

1 *of the proportionate share of that defendant,*
 2 *as determined under subsection (b)(2).*

3 *(B) OVERALL LIMIT.—The total payments*
 4 *required under subparagraph (A) from all de-*
 5 *fendants may not exceed the amount of the*
 6 *uncollectible share.*

7 *(C) SUBJECT TO CONTRIBUTION.—A defend-*
 8 *ant against whom judgment is not collectible is*
 9 *subject to contribution and to any continuing li-*
 10 *ability to the plaintiff on the judgment.*

11 *(2) SPECIAL RIGHT OF CONTRIBUTION.—To the*
 12 *extent that a defendant is required to make an addi-*
 13 *tional payment under paragraph (1), that defendant*
 14 *may recover contribution—*

15 *(A) from the defendant originally liable to*
 16 *make the payment;*

17 *(B) from any other defendant that is jointly*
 18 *and severally liable;*

19 *(C) from any other defendant held propor-*
 20 *tionately liable who is liable to make the same*
 21 *payment and has paid less than that other de-*
 22 *fendant's proportionate share of that payment;*
 23 *or*

24 *(D) from any other person responsible for*
 25 *the conduct giving rise to the payment that*

1 *would have been liable to make the same pay-*
 2 *ment.*

3 (3) *NONDISCLOSURE TO JURY.*—*The standard*
 4 *for allocation of damages under subsection (a) and*
 5 *subsection (b)(1), and the procedure for reallocation of*
 6 *uncollectible shares under paragraph (1) of this sub-*
 7 *section, shall not be disclosed to members of the jury.*
 8 (e) *SETTLEMENT DISCHARGE.*—

9 (1) *IN GENERAL.*—*A defendant who settles a*
 10 *Y2K action at any time before final verdict or judg-*
 11 *ment shall be discharged from all claims for contribu-*
 12 *tion brought by other persons. Upon entry of the set-*
 13 *tlement by the court, the court shall enter a bar order*
 14 *constituting the final discharge of all obligations to*
 15 *the plaintiff of the settling defendant arising out of*
 16 *the action. The order shall bar all future claims for*
 17 *contribution arising out of the action—*

18 (A) *by any person against the settling de-*
 19 *fendant; and*

20 (B) *by the settling defendant against any*
 21 *person other than a person whose liability has*
 22 *been extinguished by the settlement of the settling*
 23 *defendant.*

24 (2) *REDUCTION.*—*If a defendant enters into a*
 25 *settlement with the plaintiff before the final verdict or*

1 *judgment, the verdict or judgment shall be reduced by*
2 *the greater of—*

3 *(A) an amount that corresponds to the per-*
4 *centage of responsibility of that defendant; or*

5 *(B) the amount paid to the plaintiff by that*
6 *defendant.*

7 *(f) GENERAL RIGHT OF CONTRIBUTION.—*

8 *(1) IN GENERAL.—A defendant who is jointly*
9 *and severally liable for damages in any Y2K action*
10 *may recover contribution from any other person who,*
11 *if joined in the original action, would have been liable*
12 *for the same damages. A claim for contribution shall*
13 *be determined based on the percentage of responsi-*
14 *bility of the claimant and of each person against*
15 *whom a claim for contribution is made.*

16 *(2) STATUTE OF LIMITATIONS FOR CONTRIBU-*
17 *TION.—An action for contribution in connection with*
18 *a Y2K action shall be brought not later than 6*
19 *months after the entry of a final, nonappealable judg-*
20 *ment in the Y2K action, except that an action for*
21 *contribution brought by a defendant who was re-*
22 *quired to make an additional payment under sub-*
23 *section (d)(1) may be brought not later than 6 months*
24 *after the date on which such payment was made.*

1 (g) *MORE PROTECTIVE STATE LAW NOT PRE-*
 2 *EMPTED.*—*Nothing in this section preempts or supersedes*
 3 *any provision of State statutory law that—*

4 (1) *limits the liability of a defendant in a Y2K*
 5 *action to a lesser amount than the amount deter-*
 6 *mined under this section; or*

7 (2) *otherwise affords a greater degree of protec-*
 8 *tion from joint or several liability than is afforded by*
 9 *this section.*

10 **SEC. 7. PRELITIGATION NOTICE.**

11 (a) *IN GENERAL.*—*Before commencing a Y2K action,*
 12 *except an action that seeks only injunctive relief, a prospec-*
 13 *tive plaintiff with a Y2K claim shall send a written notice*
 14 *by certified mail (with either return receipt requested or*
 15 *other means of verification that the notice was sent) to each*
 16 *prospective defendant in that action. The notice shall pro-*
 17 *vide specific and detailed information about—*

18 (1) *the manifestations of any material defect al-*
 19 *leged to have caused harm or loss;*

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

22 (3) *how the prospective plaintiff would like the*
 23 *prospective defendant to remedy the problem;*

24 (4) *the basis upon which the prospective plaintiff*
 25 *seeks that remedy; and*

1 (5) *the name, title, address, and telephone num-*
 2 *ber of any individual who has authority to negotiate*
 3 *a resolution of the dispute on behalf of the prospective*
 4 *plaintiff.*

5 (b) *PERSON TO WHOM NOTICE TO BE SENT.*—*The no-*
 6 *tice required by subsection (a) shall be sent—*

7 (1) *to the registered agent of the prospective de-*
 8 *fendant for service of legal process;*

9 (2) *if the prospective defendant does not have a*
 10 *registered agent, then to the chief executive officer of*
 11 *a corporation, the managing partner of a partner-*
 12 *ship, the proprietor of a sole proprietorship, or to a*
 13 *similarly-situated person for any other enterprise; or*

14 (3) *if the prospective defendant has designated a*
 15 *person to receive prelitigation notices on a Year 2000*
 16 *Internet Website (as defined in section 3(7) of the*
 17 *Year 2000 Information and Readiness Disclosure*
 18 *Act), to the designated person, if the prospective*
 19 *plaintiff has reasonable access to the Internet.*

20 (c) *RESPONSE TO NOTICE.*—

21 (1) *IN GENERAL.*—*Within 30 days after receipt*
 22 *of the notice specified in subsection (a), each prospec-*
 23 *tive defendant shall send by certified mail with return*
 24 *receipt requested to each prospective plaintiff a writ-*
 25 *ten statement acknowledging receipt of the notice, and*

1 describing the actions it has taken or will take to ad-
 2 dress the problem identified by the prospective plain-
 3 tiff.

4 (2) *WILLINGNESS TO ENGAGE IN ADR.*—The
 5 written statement shall state whether the prospective
 6 defendant is willing to engage in alternative dispute
 7 resolution.

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

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

19 (5) *PRIORITY.*—A prospective defendant receiv-
 20 ing more than 1 notice under this section may give
 21 priority to notices with respect to a product or service
 22 that involves a health or safety related Y2K failure.

23 (d) *FAILURE TO RESPOND.*—If a prospective
 24 defendant—

1 (1) *fails to respond to a notice provided pursu-*
 2 *ant to subsection (a) within the 30 days specified in*
 3 *subsection (c)(1); or*

4 (2) *does not describe the action, if any, the pro-*
 5 *spective defendant has taken, or will take, to address*
 6 *the problem identified by the prospective plaintiff,*
 7 *the prospective plaintiff may immediately commence a legal*
 8 *action against that prospective defendant.*

9 (e) *REMEDATION PERIOD.*—

10 (1) *IN GENERAL.*—*If the prospective defendant*
 11 *responds and proposes remedial action it will take, or*
 12 *offers to engage in alternative dispute resolution, then*
 13 *the prospective plaintiff shall allow the prospective*
 14 *defendant an additional 60 days from the end of the*
 15 *30-day notice period to complete the proposed reme-*
 16 *dial action before commencing a legal action against*
 17 *that prospective defendant.*

18 (2) *EXTENSION BY AGREEMENT.*—*The prospec-*
 19 *tive plaintiff and prospective defendant may change*
 20 *the length of the 60-day remediation period by writ-*
 21 *ten agreement.*

22 (3) *MULTIPLE EXTENSIONS NOT ALLOWED.*—*Ex-*
 23 *cept as provided in paragraph (2), a defendant in a*
 24 *Y2K action is entitled to no more than one 30-day*

1 *period and one 60-day remediation period under*
 2 *paragraph (1).*

3 (4) *STATUTES OF LIMITATION, ETC., TOLLED.—*
 4 *Any applicable statute of limitations or doctrine of*
 5 *laches in a Y2K action to which paragraph (1) ap-*
 6 *plies shall be tolled during the notice and remediation*
 7 *period under that paragraph.*

8 (f) *FAILURE TO PROVIDE NOTICE.—If a defendant de-*
 9 *termines that a plaintiff has filed a Y2K action without*
 10 *providing the notice specified in subsection (a) or without*
 11 *awaiting the expiration of the appropriate waiting period*
 12 *specified in subsection (c), the defendant may treat the*
 13 *plaintiff's complaint as such a notice by so informing the*
 14 *court and the plaintiff in its initial response to the plain-*
 15 *tiff. If any defendant elects to treat the complaint as such*
 16 *a notice—*

17 (1) *the court shall stay all discovery and all*
 18 *other proceedings in the action for the appropriate*
 19 *period after filing of the complaint; and*

20 (2) *the time for filing answers and all other*
 21 *pleadings shall be tolled during the appropriate pe-*
 22 *riod.*

23 (g) *EFFECT OF CONTRACTUAL OR STATUTORY WAIT-*
 24 *ING PERIODS.—In cases in which a contract, or a statute*
 25 *enacted before January 1, 1999, requires notice of non-*

1 *performance and provides for a period of delay prior to the*
 2 *initiation of suit for breach or repudiation of contract, the*
 3 *period of delay provided by contract or the statute is con-*
 4 *trolling over the waiting period specified in subsections (c)*
 5 *and (d).*

6 (h) *STATE LAW CONTROLS ALTERNATIVE METH-*
 7 *ODS.—Nothing in this section supersedes or otherwise pre-*
 8 *empts any State law or rule of civil procedure with respect*
 9 *to the use of alternative dispute resolution for Y2K actions.*

10 (i) *PROVISIONAL REMEDIES UNAFFECTED.—Nothing*
 11 *in this section interferes with the right of a litigant to pro-*
 12 *visional remedies otherwise available under Rule 65 of the*
 13 *Federal Rules of Civil Procedure or any State rule of civil*
 14 *procedure providing extraordinary or provisional remedies*
 15 *in any civil action in which the underlying complaint seeks*
 16 *both injunctive and monetary relief.*

17 (j) *SPECIAL RULE FOR CLASS ACTIONS.—For the pur-*
 18 *pose of applying this section to a Y2K action that is main-*
 19 *tained as a class action in Federal or State court, the re-*
 20 *quirements of the preceding subsections of this section apply*
 21 *only to named plaintiffs in the class action.*

22 **SEC. 8. PLEADING REQUIREMENTS.**

23 (a) *APPLICATION WITH RULES OF CIVIL PROCE-*
 24 *DURE.—This section applies exclusively to Y2K actions*
 25 *and, except to the extent that this section requires addi-*

1 tional information to be contained in or attached to plead-
 2 ings, nothing in this section is intended to amend or other-
 3 wise supersede applicable rules of Federal or State civil pro-
 4 cedure.

5 (b) *NATURE AND AMOUNT OF DAMAGES.*—In all Y2K
 6 actions in which damages are requested, there shall be filed
 7 with the complaint a statement of specific information as
 8 to the nature and amount of each element of damages and
 9 the factual basis for the damages calculation.

10 (c) *MATERIAL DEFECTS.*—In any Y2K action in
 11 which the plaintiff alleges that there is a material defect
 12 in a product or service, there shall be filed with the com-
 13 plaint a statement of specific information regarding the
 14 manifestations of the material defects and the facts sup-
 15 porting a conclusion that the defects are material.

16 (d) *REQUIRED STATE OF MIND.*—In any Y2K action
 17 in which a claim is asserted on which the plaintiff may
 18 prevail only on proof that the defendant acted with a par-
 19 ticular state of mind, there shall be filed with the complaint,
 20 with respect to each element of that claim, a statement of
 21 the facts giving rise to a strong inference that the defendant
 22 acted with the required state of mind.

23 **SEC. 9. DUTY TO MITIGATE.**

24 Damages awarded in any Y2K action shall exclude
 25 compensation for damages the plaintiff could reasonably

1 *have avoided in light of any disclosure or other information*
 2 *of which the plaintiff was, or reasonably should have been,*
 3 *aware, including information made available by the defend-*
 4 *ant to purchasers or users of the defendant's product or*
 5 *services concerning means of remedying or avoiding the*
 6 *Y2K failure.*

7 **SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR**
 8 **COMMERCIAL IMPRACTICABILITY DOCTRINES.**
 9

10 *In any Y2K action for breach or repudiation of con-*
 11 *tract, the applicability of the doctrines of impossibility and*
 12 *commercial impracticability shall be determined by the law*
 13 *in existence on January 1, 1999. Nothing in this Act shall*
 14 *be construed as limiting or impairing a party's right to*
 15 *assert defenses based upon such doctrines.*

16 **SEC. 11. DAMAGES LIMITATION BY CONTRACT.**

17 *In any Y2K action for breach or repudiation of con-*
 18 *tract, no party may claim, nor be awarded, any category*
 19 *of damages unless such damages are allowed—*

20 *(1) by the express terms of the contract; or*

21 *(2) if the contract is silent on such damages, by*
 22 *operation of State law at the time the contract was*
 23 *effective or by operation of Federal law.*

1 **SEC. 12. DAMAGES IN TORT CLAIMS.**

2 (a) *IN GENERAL.*—A party to a Y2K action making
3 a tort claim may not recover damages for economic loss
4 unless—

5 (1) the recovery of such losses is provided for in
6 a contract to which the party seeking to recover such
7 losses is a party; or

8 (2) such losses result directly from damage to
9 tangible personal or real property caused by the Y2K
10 failure (other than damage to property that is the
11 subject of the contract between the parties to the Y2K
12 action or, in the event there is no contract between the
13 parties, other than damage caused only to the prop-
14 erty that experienced the Y2K failure),

15 and such damages are permitted under applicable Federal
16 or State law.

17 (b) *ECONOMIC LOSS.*—For purposes of this section
18 only, and except as otherwise specifically provided in a
19 valid and enforceable written contract between the plaintiff
20 and the defendant in a Y2K action, the term “economic
21 loss”—

22 (1) means amounts awarded to compensate an
23 injured party for any loss other than losses described
24 in subsection (a)(2); and

25 (2) includes amounts awarded for damages such
26 as—

1 (A) lost profits or sales;

2 (B) business interruption;

3 (C) losses indirectly suffered as a result of
4 the defendant's wrongful act or omission;

5 (D) losses that arise because of the claims of
6 third parties;

7 (E) losses that must be plead as special
8 damages; and

9 (F) consequential damages (as defined in
10 the Uniform Commercial Code or analogous
11 State commercial law).

12 (c) *CERTAIN ACTIONS EXCLUDED.*—This section does
13 not affect, abrogate, amend, or alter any patent, copyright,
14 trade-secret, trademark, or service-mark action, or any
15 claim for defamation or invasion of privacy under Federal
16 or State law.

17 (d) *CERTAIN OTHER ACTIONS.*—A person liable for
18 damages, whether by settlement or judgment, in a civil ac-
19 tion to which this Act does not apply because of section 4(c)
20 whose liability, in whole or in part, is the result of a Y2K
21 failure may, notwithstanding any other provision of this
22 Act, pursue any remedy otherwise available under Federal
23 or State law against the person responsible for that Y2K
24 failure to the extent of recovering the amount of those dam-
25 ages.

1 **SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.**

2 (a) *DEFENDANT'S STATE OF MIND.*—In a Y2K action
 3 other than a claim for breach or repudiation of contract,
 4 and in which the defendant's actual or constructive aware-
 5 ness of an actual or potential Y2K failure is an element
 6 of the claim, the defendant is not liable unless the plaintiff
 7 establishes that element of the claim by the standard of evi-
 8 dence under applicable State law in effect before January
 9 1, 1999.

10 (b) *LIMITATION ON BYSTANDER LIABILITY FOR Y2K*
 11 *FAILURES.*—

12 (1) *IN GENERAL.*—With respect to any Y2K ac-
 13 tion for money damages in which—

14 (A) the defendant is not the manufacturer,
 15 seller, or distributor of a product, or the provider
 16 of a service, that suffers or causes the Y2K fail-
 17 ure at issue;

18 (B) the plaintiff is not in substantial priv-
 19 ity with the defendant; and

20 (C) the defendant's actual or constructive
 21 awareness of an actual or potential Y2K failure
 22 is an element of the claim under applicable law,
 23 the defendant shall not be liable unless the plaintiff,
 24 in addition to establishing all other requisite elements
 25 of the claim, proves, by the standard of evidence
 26 under applicable State law in effect before January 1,

1 1999, that the defendant actually knew, or recklessly
2 disregarded a known and substantial risk, that such
3 failure would occur.

4 (2) *SUBSTANTIAL PRIVITY.*—For purposes of
5 paragraph (1)(B), a plaintiff and a defendant are in
6 substantial privity when, in a Y2K action arising out
7 of the performance of professional services, the plain-
8 tiff and the defendant either have contractual rela-
9 tions with one another or the plaintiff is a person
10 who, prior to the defendant’s performance of such
11 services, was specifically identified to and acknowl-
12 edged by the defendant as a person for whose special
13 benefit the services were being performed.

14 (3) *CERTAIN CLAIMS EXCLUDED.*—For purposes
15 of paragraph (1)(C), claims in which the defendant’s
16 actual or constructive awareness of an actual or po-
17 tential Y2K failure is an element of the claim under
18 applicable law do not include claims for negligence
19 but do include claims such as fraud, constructive
20 fraud, breach of fiduciary duty, negligent misrepre-
21 sentation, and interference with contract or economic
22 advantage.

23 (c) *CONTROL NOT DETERMINATIVE OF LIABILITY.*—
24 The fact that a Y2K failure occurred in an entity, facility,
25 system, product, or component that was sold, leased, rented,

1 *or otherwise within the control of the party against whom*
 2 *a claim is asserted in a Y2K action shall not constitute*
 3 *the sole basis for recovery of damages in that action. A*
 4 *claim in a Y2K action for breach or repudiation of contract*
 5 *for such a failure is governed by the terms of the contract.*

6 *(d) PROTECTIONS OF THE YEAR 2000 INFORMATION*
 7 *AND READINESS DISCLOSURE ACT APPLY.—The protec-*
 8 *tions for the exchanges of information provided by section*
 9 *4 of the Year 2000 Information and Readiness Disclosure*
 10 *Act (Public Law 105–271) shall apply to this Act.*

11 **SEC. 14. APPOINTMENT OF SPECIAL MASTERS OR MAG-**
 12 **ISTRATE JUDGES FOR Y2K ACTIONS.**

13 *Any District Court of the United States in which a*
 14 *Y2K action is pending may appoint a special master or*
 15 *a magistrate judge to hear the matter and to make findings*
 16 *of fact and conclusions of law in accordance with Rule 53*
 17 *of the Federal Rules of Civil Procedure.*

18 **SEC. 15. Y2K ACTIONS AS CLASS ACTIONS.**

19 *(a) MATERIAL DEFECT REQUIREMENT.—A Y2K ac-*
 20 *tion involving a claim that a product or service is defective*
 21 *may be maintained as a class action in Federal or State*
 22 *court as to that claim only if—*

23 *(1) it satisfies all other prerequisites established*
 24 *by applicable Federal or State law, including appli-*
 25 *cable rules of civil procedure; and*

1 (2) *the court finds that the defect in a product*
2 *or service as alleged would be a material defect for the*
3 *majority of the members of the class.*

4 (b) *NOTIFICATION.—In any Y2K action that is main-*
5 *tained as a class action, the court, in addition to any other*
6 *notice required by applicable Federal or State law, shall*
7 *direct notice of the action to each member of the class, which*
8 *shall include—*

9 (1) *a concise and clear description of the nature*
10 *of the action;*

11 (2) *the jurisdiction where the case is pending;*
12 *and*

13 (3) *the fee arrangements with class counsel, in-*
14 *cluding the hourly fee being charged, or, if it is a con-*
15 *tingency fee, the percentage of the final award which*
16 *will be paid, including an estimate of the total*
17 *amount that would be paid if the requested damages*
18 *were to be granted.*

19 (c) *FORUM FOR Y2K CLASS ACTIONS.—*

20 (1) *JURISDICTION.—Except as provided in para-*
21 *graph (2), a Y2K action may be brought as a class*
22 *action in a United States District Court or removed*
23 *to a United States District Court if the amount in*
24 *controversy is greater than the sum or value of*
25 *\$1,000,000 (exclusive of interest and costs), computed*

1 *on the basis of all claims to be determined in the ac-*
 2 *tion.*

3 (2) *EXCEPTION.—A Y2K action may not be*
 4 *brought or removed as a class action under this sec-*
 5 *tion if—*

6 (A)(i) *a substantial majority of the mem-*
 7 *bers of the proposed plaintiff class are citizens of*
 8 *a single State;*

9 (ii) *the primary defendants are citizens of*
 10 *that State; and*

11 (iii) *the claims asserted will be governed*
 12 *primarily by the law of that State; or*

13 (B) *the primary defendants are States,*
 14 *State officials, or other governmental entities*
 15 *against whom the United States District Court*
 16 *may be foreclosed from ordering relief.*

17 (d) *EFFECT ON RULES OF CIVIL PROCEDURE.—Ex-*
 18 *cept as otherwise provided in this section, nothing in this*
 19 *section supersedes any rule of Federal or State civil proce-*
 20 *dure applicable to class actions.*

21 **SEC. 16. APPLICABILITY OF STATE LAW.**

22 *Nothing in this Act shall be construed to affect the ap-*
 23 *plicability of any State law that provides greater limits on*
 24 *damages and liabilities than are provided in this Act.*

1 **SEC. 17. ADMISSIBLE EVIDENCE ULTIMATE ISSUE IN STATE**
 2 **COURTS.**

3 *Any party to a Y2K action in a State court in a State*
 4 *that has not adopted a rule of evidence substantially similar*
 5 *to Rule 704 of the Federal Rules of Evidence may introduce*
 6 *in such action evidence that would be admissible if Rule*
 7 *704 applied in that jurisdiction.*

8 **SEC. 18. SUSPENSION OF PENALTIES FOR CERTAIN YEAR**
 9 **2000 FAILURES BY SMALL BUSINESS CON-**
 10 **CERNS.**

11 *(a) DEFINITIONS.—In this section—*

12 *(1) the term “agency” means any executive agen-*
 13 *cy, as defined in section 105 of title 5, United States*
 14 *Code, that has the authority to impose civil penalties*
 15 *on small business concerns;*

16 *(2) the term “first-time violation” means a vio-*
 17 *lation by a small business concern of a Federal rule*
 18 *or regulation (other than a Federal rule or regulation*
 19 *that relates to the safety and soundness of the banking*
 20 *or monetary system, including protection of deposi-*
 21 *tors) resulting from a Y2K failure if that Federal rule*
 22 *or regulation had not been violated by that small*
 23 *business concern within the preceding 3 years; and*

24 *(3) the term “small business concern” has the*
 25 *same meaning as a defendant described in section*
 26 *5(b)(2)(B).*

1 (b) *ESTABLISHMENT OF LIAISONS.*—Not later than 30
2 days after the date of enactment of this section each agency
3 shall—

4 (1) *establish a point of contact within the agency*
5 *to act as a liaison between the agency and small busi-*
6 *ness concerns with respect to problems arising out of*
7 *Y2K failures and compliance with Federal rules or*
8 *regulations; and*

9 (2) *publish the name and phone number of the*
10 *point of contact for the agency in the Federal Reg-*
11 *ister.*

12 (c) *GENERAL RULE.*—Subject to subsections (d) and
13 (e), no agency shall impose any civil money penalty on a
14 small business concern for a first-time violation.

15 (d) *STANDARDS FOR WAIVER.*—In order to receive a
16 waiver of civil money penalties from an agency for a first-
17 time violation, a small business concern shall demonstrate
18 that—

19 (1) *the small business concern previously made a*
20 *good faith effort to effectively remediate Y2K prob-*
21 *lems;*

22 (2) *a first-time violation occurred as a result of*
23 *the Y2K system failure of the small business concern*
24 *or other entity, which affected the small business con-*

1 cern's ability to comply with a federal rule or regula-
2 tion;

3 (3) the first-time violation was unavoidable in
4 the face of a Y2K system failure or occurred as a re-
5 sult of efforts to prevent the disruption of critical
6 functions or services that could result in harm to life
7 or property;

8 (4) upon identification of a first-time violation,
9 the small business concern initiated reasonable and
10 timely measures to remediate the violation; and

11 (5) the small business concern submitted notice
12 to the appropriate agency of the first-time violation
13 within a reasonable time not to exceed 7 business
14 days from the time that the small business concern be-
15 came aware that a first-time violation had occurred.

16 (e) *EXCEPTIONS*.—An agency may impose civil money
17 penalties authorized under Federal law on a small business
18 concern for a first-time violation if—

19 (1) the small business concern's failure to comply
20 with Federal rules or regulations constitutes or cre-
21 ates an imminent threat to public health, safety, or
22 the environment; or

- 1 (2) *the small business concern fails to correct the*
- 2 *violation not later than 1 month after initial notifi-*
- 3 *cation to the agency.*

Attest:

Secretary.

106TH CONGRESS
1ST SESSION

H. R. 775

AMENDMENT

HR 775 EAS—2

HR 775 EAS—3

HR 775 EAS—4

HR 775 EAS—5