

106TH CONGRESS
1ST SESSION

H. R. 775

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

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Year 2000 Readiness
5 and Responsibility Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The Congress seeks to encourage businesses
4 to concentrate their attention and resources in the
5 short time remaining before January 1, 2000, on ad-
6 dressing, assessing, remediating, and testing their
7 Year 2000 problems, and to minimize any possible
8 business disruptions associated with Year 2000
9 issues.

10 (2) It is appropriate for the Congress to enact
11 legislation to assure that Year 2000 problems do not
12 unnecessarily disrupt interstate commerce or create
13 unnecessary case loads in Federal courts and to pro-
14 vide initiatives to help businesses prepare and be in
15 a position to withstand the potentially devastating
16 economic impact of the Year 2000 problem.

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

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

24 (5) The delays, expense, uncertainties, loss of
25 control, adverse publicity and animosities that fre-
26 quently accompany litigation of business disputes

1 can only exacerbate the difficulties associated with
2 the Year 2000 date change, and work against the
3 successful resolution of those difficulties.

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

12 (7) A proliferation of frivolous Year 2000
13 actions by opportunistic parties may further limit
14 access to courts by straining the resources of the
15 legal system and depriving deserving parties of their
16 legitimate rights to relief.

17 (8) The Congress encourages businesses to ap-
18 proach their Year 2000 disputes responsibly, and to
19 avoid unnecessary, time-consuming and costly litiga-
20 tion based on Year 2000 failures. Congress supports
21 good faith negotiations between parties when there
22 is a dispute over a Year 2000 problem, and, if nec-
23 essary, urges the parties to enter into voluntary,
24 non-binding mediation rather than litigation.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) ACTUAL DAMAGES.—The term “actual dam-
4 ages” means damages for injury to tangible prop-
5 erty, and the cost of repairing or replacing defective
6 products.

7 (2) CONTRACT.—The term “contract” means a
8 contract, tariff, license, or warranty.

9 (3) DEFENDANT.—The term “defendant”
10 means any person against whom a year 2000 claim
11 has been asserted.

12 (4) ECONOMIC LOSS.—The term “economic
13 loss”—

14 (A) means any damages other than dam-
15 ages arising out of personal injury or damage
16 to tangible property;

17 (B) includes, but is not limited to, dam-
18 ages for lost profits or sales, for business inter-
19 ruption, for losses indirectly suffered as a result
20 of the defendant’s wrongful act or omission, for
21 losses that arise because of the claims of third
22 parties, for losses that must be pleaded as spe-
23 cial damages, or for items defined as con-
24 sequential damages in the Uniform Commercial
25 Code or analogous State commercial law; and

1 (C) does not include non-economic dam-
2 ages.

3 (5) MATERIAL DEFECT.—The term “material
4 defect” means a defect in any item, whether tangible
5 or intangible, or in the provision of a service, that
6 substantially prevents the item or service from oper-
7 ating or functioning as designed or intended. Defects
8 that have an insignificant or de minimis effect on
9 the operation or functioning of an item, or that af-
10 fect only a component of an item that, as a whole,
11 substantially operates or functions as designed, or
12 that have an insignificant or de minimis effect on
13 the efficacy of the service provided, are not material
14 defects within the meaning of this definition.

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

20 (7) PERSONAL INJURY.—The term “personal
21 injury” means any physical injury to a natural per-
22 son, including death of the person. It does not in-
23 clude mental suffering, emotional distress, or like
24 elements of injury that do not constitute physical
25 harm to a natural person.

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

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

8 (10) STATE.—The term “State” means any
9 State of the United States, the District of Columbia,
10 the Commonwealth of Puerto Rico, the Northern
11 Mariana Islands, the United States Virgin Islands,
12 Guam, American Samoa, and any other territory or
13 possession of the United States, and any political
14 subdivision thereof.

15 (11) YEAR 2000 ACTION.—The term “year 2000
16 action” means any civil action of any kind brought
17 in any court under Federal or State law, in which—

18 (A) a year 2000 claim is asserted; or

19 (B) any claim or defense, other than a
20 claim or defense based on personal injury, is re-
21 lated, directly or indirectly, to an actual or po-
22 tential year 2000 failure.

23 (12) YEAR 2000 CLAIM.—The term “year 2000
24 claim” means any claim or cause of action of any
25 kind, other than a claim based on personal injury,

1 whether asserted by way of claim, counterclaim,
2 cross-claim, third-party claim, or otherwise, in which
3 the plaintiff's alleged loss or harm resulted, directly
4 or indirectly, from an actual or potential year 2000
5 failure.

6 (13) YEAR 2000 FAILURE.—The term “year
7 2000 failure” means any failure by any device or
8 system (including, without limitation, any computer
9 system and any microchip or integrated circuit em-
10 bedded in another device or product), or any soft-
11 ware, firmware, or other set or collection of process-
12 ing instructions, however constructed, in processing,
13 calculating, comparing, sequencing, displaying, stor-
14 ing, transmitting, or receiving date-related data, in-
15 cluding, without limitation, failure in accurately
16 dealing with or failure in accurately accounting for
17 transitions or comparisons from, into, and between
18 the years 1999 and 2000, failure to recognize or ac-
19 curately process any specific date, and failure accu-
20 rately to account for the year 2000's status as a
21 leap year.

22 **SEC. 4. EXCLUSION OF PERSONAL INJURY CLAIMS.**

23 None of the provisions of this Act shall apply to any
24 claim based on personal injury.

1 **TITLE I—UNIFORM PRELITI-**
2 **GATION PROCEDURES FOR**
3 **YEAR 2000 ACTIONS**

4 **SEC. 101. NOTICE PROCEDURES TO AVOID UNNECESSARY**
5 **YEAR 2000 ACTIONS.**

6 (a) NOTIFICATION PERIOD.—Before filing a year
7 2000 action, except an action that seeks only injunctive
8 relief, a prospective plaintiff shall provide to each prospec-
9 tive defendant a written notice that identifies, with
10 particularity—

11 (1) any symptoms of a material defect alleged
12 to have caused injury;

13 (2) the injury allegedly suffered by the prospec-
14 tive plaintiff;

15 (3) the facts that lead the prospective plaintiff
16 to hold such person responsible for both the defect
17 and the injury; and

18 (3) the relief or action sought by the prospec-
19 tive plaintiff.

20 Except as provided in subsection (c), the prospective plain-
21 tiff shall not commence an action in Federal or State court
22 until the expiration of 90 days after the date on which
23 such notice is provided. Such 90-day period shall be ex-
24 cluded in the computation of any applicable statute of lim-
25 itations.

1 (b) RESPONSE TO NOTICE.—Not later than 30 days
2 after receipt of the notice specified in subsection (a), each
3 prospective defendant shall provide to each prospective
4 plaintiff a written statement acknowledging receipt of the
5 notice and describing the actions it will take or has taken,
6 if any, to address the problem identified by the prospective
7 plaintiff.

8 (c) FAILURE TO RESPOND.—If a prospective defend-
9 ant fails to respond to a notice provided pursuant to sub-
10 section (a) within the 30-day period specified in subsection
11 (b) or does not describe the action, if any, that the pro-
12 spective defendant will take to address the problem identi-
13 fied by the prospective plaintiff, the 90-day period speci-
14 fied in subsection (a) shall terminate at the end of that
15 30-day period as to that prospective defendant and the
16 prospective plaintiff may thereafter commence its action
17 against that prospective defendant.

18 (d) FAILURE TO PROVIDE NOTICE.—If a defendant
19 determines that a plaintiff has filed a year 2000 action
20 without providing the notice specified in subsection (a)
21 and without awaiting the expiration of the 90-day period
22 specified in subsection (a), the defendant may treat the
23 plaintiff's complaint as such a notice by so informing the
24 court and the plaintiff. If any defendant elects to treat
25 the complaint as such a notice—

1 (1) the court shall stay all discovery and all
2 other proceedings in the action for 90 days after fil-
3 ing of the complaint; and

4 (2) the time for filing answers and all other
5 pleadings shall be tolled during this 90-day period.

6 (e) EFFECT OF CONTRACTUAL WAITING PERIODS.—

7 In cases where a contract requires notice of nonperform-
8 ance and provides for a period of delay prior to the initi-
9 ation of suit for breach or repudiation of contract, the pe-
10 riod of delay provided in the contract is controlling over
11 the waiting period specified in subsections (a) and (d).

12 (f) SANCTION FOR FRIVOLOUS INVOCATION OF THE
13 STAY PROVISION.—In any action in which a defendant
14 acts pursuant to subsection (d) to stay the action, and
15 the court subsequently finds that the defendant's assertion
16 that the suit is a year 2000 action was frivolous and made
17 for the purpose of causing unnecessary delay, the court
18 may award sanctions to opposing parties in accordance
19 with the provisions of Rule 11 of the Federal Rules of
20 Civil Procedure.

21 (g) COMPUTATION OF TIME.—For purposes of this
22 section, the rules regarding computation of time shall be
23 governed by the applicable Federal or State rules of civil
24 procedure.

1 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION TO AVOID**
2 **UNNECESSARY YEAR 2000 ACTIONS.**

3 (a) IN GENERAL.—(1) At any time during the 90-
4 day period specified in section 101(a), either party may
5 request the other to use alternative dispute resolution. If,
6 based upon that request, the parties enter into an agree-
7 ment to use alternative dispute resolution, they may also
8 agree to an extension of the 90-day period.

9 (2) At any time after expiration of the 90-day period
10 specified in section 101(a), whether before or after the fil-
11 ing of a complaint, either party may request the other to
12 use alternative dispute resolution.

13 (b) PAYMENT OF MONEYS DUE.—If the parties re-
14 solve their dispute through alternative dispute resolution
15 as provided in subsection (a), the defendant shall pay all
16 monies due within 30 days, unless another period of time
17 is agreed to by the parties or established by contract be-
18 tween the parties.

19 **SEC. 103. PLEADING REQUIREMENTS.**

20 (a) NATURE AND AMOUNT OF DAMAGES.—In any
21 year 2000 action that seeks the award of money damages,
22 the complaint shall state with particularity the nature and
23 amount of each element of damages, and the factual basis
24 for the damages calculation.

25 (b) MATERIAL DEFECTS.—In any year 2000 action
26 in which the plaintiff alleges that a product or service was

1 defective, the complaint shall identify with particularity
2 the symptoms of the material defects and shall state with
3 particularity the facts supporting the conclusion that the
4 defects were material.

5 (c) REQUIRED STATE OF MIND.—In any year 2000
6 action in which a claim is asserted as to which the plaintiff
7 may prevail only on proof that the defendant acted with
8 a particular state of mind, the complaint shall, with re-
9 spect to each element of the claim, state with particularity
10 the facts giving rise to a strong inference that the defend-
11 ant acted with the required state of mind.

12 (d) MOTION TO DISMISS; STAY OF DISCOVERY.—

13 (1) DISMISSAL FOR FAILURE TO MEET PLEAD-
14 ING REQUIREMENTS.—In any year 2000 action, the
15 court shall, on the motion of any defendant, dismiss
16 the complaint with or without prejudice if the re-
17 quirements of subsection (a), (b), or (c) are not met
18 with respect to any claim asserted therein.

19 (2) STAY OF DISCOVERY.—In any year 2000
20 action, all discovery shall be stayed during the pend-
21 ency of any motion to dismiss, unless the court finds
22 upon the motion of any party that particularized dis-
23 covery is necessary to preserve evidence or prevent
24 undue prejudice to that party.

25 (3) PRESERVATION OF EVIDENCE.—

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

(B) SANCTION FOR WILLFUL VIOLATION.—A party aggrieved by the willful failure of an opposing party to comply with subparagraph (A) may apply to the court for an order awarding appropriate sanctions.

**SEC. 104. DUTY OF ALL PERSONS TO MITIGATE YEAR 2000
COMPUTER FAILURES AND RESULTING DAMAGES.**

There shall be no recovery in any year 2000 action on account of injury that the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably could have

1 been, aware, and the damages awarded in any such action
 2 shall exclude any amount that the plaintiff reasonably
 3 could have avoided in light of any such disclosure or infor-
 4 mation.

5 **TITLE II—YEAR 2000 ACTIONS** 6 **INVOLVING CONTRACTS**

7 **SEC. 201. CERTAINTY OF CONTRACT TERMS FOR PREVEN-** 8 **TION OF YEAR 2000 DAMAGES.**

9 Notwithstanding any other provision of Federal or
 10 State statutory or common law, in any year 2000 action
 11 all written contractual terms, including limitations or ex-
 12 clusions of liability or disclaimers of warranty, shall be
 13 fully enforceable, except that—

14 (1) if the contract is silent as to a particular
 15 issue, the interpretation of the contract as to that
 16 issue shall be determined by applicable law in force
 17 at the time that the contract was entered into; and

18 (2) this section does not apply if a court deter-
 19 mines that the contract as a whole is unenforceable
 20 due to an infirmity in the formation of the contract
 21 under applicable law in force at the time the con-
 22 tract was entered into.

23 **SEC. 202. DEFENSES.**

24 (a) REASONABLE EFFORTS.—In any year 2000 ac-
 25 tion in which breach of contract is alleged, in addition to

1 any other rights provided by applicable law, the party
2 against whom the claim of breach is asserted shall be al-
3 lowed to offer evidence that its implementation of the con-
4 tract, or its efforts to implement the contract, were rea-
5 sonable in light of the circumstances for the purpose of
6 limiting or eliminating the defendant's liability.

7 (b) IMPOSSIBILITY OR COMMERCIAL IMPRACTICABIL-
8 ITY.—In any year 2000 action in which breach of contract
9 is alleged, applicability of the doctrines of impossibility
10 and commercial impracticability shall be determined by
11 applicable law in existence on January 1, 1999, and noth-
12 ing in this Act shall be construed as limiting or impairing
13 a party's right to assert defenses based upon such doc-
14 trines.

15 **SEC. 203. PROTECTION OF PERSONS FROM LIABILITY NOT**
16 **ANTICIPATED IN YEAR 2000 CONTRACTS.**

17 In any year 2000 action involving a breach of con-
18 tract or a claim related to the contract, the court shall
19 not award any damages unless such damages are provided
20 for by the express terms of the contract, or, if the contract
21 is silent on such damages, then by operation of the appli-
22 cable Federal or State law that governed interpretation
23 of the contract at the time the contract was entered into.

1 **TITLE III—YEAR 2000 ACTIONS**
2 **INVOLVING TORT AND OTHER**
3 **NONCONTRACTUAL CLAIMS**

4 **SEC. 301. PROPORTIONATE LIABILITY.**

5 (a) IN GENERAL.—Except with respect to claims in-
6 volving personal injury, a person against whom a final
7 judgment is entered in a year 2000 action shall be liable
8 solely for the portion of the judgment that corresponds
9 to the percentage of responsibility of that person, as deter-
10 mined under subsection (b).

11 (b) DETERMINATION OF RESPONSIBILITY.—

12 (1) IN GENERAL.—In any year 2000 action, the
13 court shall instruct the jury to answer special inter-
14 rogatories, or if there is no jury, shall make find-
15 ings, with respect to each defendant and plaintiff,
16 and each of the other persons claimed by any of the
17 parties to have caused or contributed to the loss in-
18 curred by the plaintiff, including (but not limited to)
19 persons who have entered into settlements with the
20 plaintiff or plaintiffs, concerning the percentage of
21 responsibility of the defendant, the plaintiff, and
22 each such person, measured as a percentage of the
23 total fault of all persons who caused or contributed
24 to the total loss incurred by the plaintiff.

1 (2) CONTENTS OF SPECIAL INTERROGATORIES
 2 OR FINDINGS.—The responses to interrogatories, or
 3 findings, as appropriate, under paragraph (1) shall
 4 specify the total amount of damages that the plain-
 5 tiff is entitled to recover and the percentage of re-
 6 sponsibility of each person found to have caused or
 7 contributed to the loss incurred by the plaintiff or
 8 plaintiffs.

9 (3) FACTORS FOR CONSIDERATION.—In deter-
 10 mining the percentage of responsibility under this
 11 subsection, the trier of fact shall consider—

12 (A) the nature of the conduct of each per-
 13 son alleged to have caused or contributed to the
 14 loss incurred by the plaintiff; and

15 (B) the nature and extent of the causal re-
 16 lationship between the conduct of each such
 17 person and the damages incurred by the plain-
 18 tiff or plaintiffs.

19 (4) NONDISCLOSURE TO JURY.—The standard
 20 for allocation of damages under paragraph (1) shall
 21 not be disclosed to members of the jury.

22 **SEC. 302. PROTECTION OF GOOD FAITH EFFORTS TO PRE-**
 23 **VENT YEAR 2000 DAMAGES.**

24 (a) DEFENDANT’S STATE OF MIND AS TO YEAR 2000
 25 FAILURE.—With respect to any year 2000 claim for

1 money damages in which the defendant's actual or con-
2 structive awareness of an actual or potential year 2000
3 failure is an element of the claim under applicable law,
4 except for a claim based upon personal injury, the defend-
5 ant shall not be liable unless the plaintiff, in addition to
6 establishing all other requisite elements of the claim,
7 proves by clear and convincing evidence that the defendant
8 actually knew, or recklessly disregarded a substantial risk,
9 that such failure would occur in the specific facts and cir-
10 cumstances of such claim.

11 (b) INJURY TO PLAINTIFF.—With respect to any year
12 2000 claim for money damages in which the defendant's
13 actual or constructive awareness of actual or potential
14 harm to the plaintiff is an element of the claim under ap-
15 plicable law, except for a claim based upon personal injury,
16 the defendant shall not be liable unless the plaintiff, in
17 addition to establishing all other requisite elements of the
18 claim, proves by clear and convincing evidence that the
19 defendant actually knew, or recklessly disregarded a
20 known and substantial risk, that the plaintiff would suffer
21 such harm.

22 (c) FORESEEABILITY.—With respect to any year
23 2000 claim for money damages, except for a claim based
24 upon personal injury, the defendant shall not be liable un-
25 less the plaintiff establishes by clear and convincing evi-

1 dence, in addition to all other requisite elements of the
 2 claim, that the defendant knew or reasonably should have
 3 known that its actions would cause harm to the plaintiff
 4 in the specific facts and circumstances of such claim.

5 (d) PRESERVATION OF EXISTING LAW.—Nothing in
 6 subsections (a), (b), or (c) shall be deemed to relieve the
 7 plaintiff in any year 2000 action of its obligation to estab-
 8 lish any element of its cause of action under applicable
 9 law.

10 **SEC. 303. REASONABLE EFFORTS DEFENSE.**

11 In any year 2000 action involving a claim for money
 12 damages, except with respect to claims asserting breach
 13 or repudiation of contract—

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

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

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

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

11 (b) STANDARD FOR AWARDS.—In any year 2000 ac-
12 tion in which punitive damages may be awarded under ap-
13 plicable law, the defendant shall not be liable for punitive
14 damages unless the plaintiff proves by clear and convinc-
15 ing evidence that the defendant specifically intended to
16 cause injury to the plaintiff. This requirement is in addi-
17 tion to any other requirement in applicable law for the
18 award of such damages.

19 (c) CAPS ON PUNITIVE DAMAGES.—

20 (1) IN GENERAL.—In any year 2000 action, if
21 a defendant is found liable for punitive damages, the
22 amount of punitive damages that may be awarded to
23 a claimant shall not exceed the greater of—

24 (A) 3 times the amount awarded to the
25 claimant for actual damages; or

26 (B) \$250,000.

1 (2) SPECIAL RULE.—

2 (A) IN GENERAL.—Notwithstanding para-
3 graph (1), in any year 2000 action, if the de-
4 fendant is found liable for punitive damages
5 and the defendant—

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

8 (ii) is an owner of an unincorporated
9 business that has fewer than 25 full-time
10 employees, or

11 (iii) is—

12 (I) a partnership,

13 (II) corporation,

14 (III) association,

15 (IV) unit of local government, or

16 (V) organization,

17 that has fewer than 25 full-time employees,
18 the amount of punitive damages shall not ex-
19 ceed the lesser of 3 times the amount awarded
20 to the claimant for actual damages, or
21 \$250,000.

22 (B) APPLICABILITY.—For purposes of de-
23 termining the applicability of this paragraph to
24 a corporation, the number of employees of a
25 subsidiary of a wholly owned corporation shall

1 include all employees of a parent corporation or
2 any subsidiary of that parent corporation.

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

7 **SEC. 305. RECOVERY OF ECONOMIC DAMAGES IN YEAR 2000**
8 **ACTIONS.**

9 (a) LIMITATION ON RECOVERY OF ECONOMIC
10 LOSSES.—Subject to subsection (b), a party to a year
11 2000 action making a tort claim may recover economic
12 losses only upon establishing, in addition to all other ele-
13 ments of the claim under applicable law, that any one of
14 the following circumstances exists:

15 (1) The recovery of such losses is provided for
16 in a contract to which the party seeking to recover
17 such losses is a party.

18 (2) Such losses are incidental to a claim in the
19 year 2000 action based on personal injury caused by
20 a year 2000 failure.

21 (3) Such losses are incidental to a claim in the
22 year 2000 action based on damage to tangible prop-
23 erty caused by a year 2000 failure (other than dam-
24 age to property that is the subject of the contract).

1 (b) RECOVERY MUST BE PERMITTED UNDER APPLI-
 2 CABLE LAW.—Economic losses shall be recoverable in a
 3 year 2000 action only if applicable Federal law, or applica-
 4 ble State law embodied in statute or controlling judicial
 5 precedent as of January 1, 1999, permits the recovery of
 6 such losses in the action.

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

8 (a) IN GENERAL.—A director, officer, or trustee of
 9 a business or other organization (including a corporation,
 10 unincorporated association, partnership, or non-profit or-
 11 ganization) shall not be personally liable in any year 2000
 12 action in his or her capacity as a director or officer of
 13 the business or organization for an aggregate amount that
 14 exceeds the greater of—

- 15 (1) \$100,000; or
 16 (2) the amount of cash compensation received
 17 by the director or officer from the business or orga-
 18 nization during the 12-month period immediately
 19 preceding the act or omission for which liability was
 20 imposed.

21 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
 22 tion shall be deemed to impose, or to permit the imposition
 23 of, personal liability on any director, officer, or trustee in
 24 excess of the aggregate amount of liability to which such
 25 director, officer, or trustee would be subject under applica-

1 ble State law in existence on January 1, 1999 (including
2 any charter or bylaw authorized by such State law).

3 **TITLE IV—YEAR 2000 CLASS**
4 **ACTIONS**

5 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

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

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

22 **SEC. 402. NOTIFICATION.**

23 (a) NOTICE BY MAIL.—In any year 2000 action that
24 is maintained as a class action, the court, in addition to
25 any other notice required by applicable Federal or State

1 law, shall direct notice of the action to each member of
2 the class by United States mail, return receipt requested.
3 Persons whose actual receipt of the notice is not verified
4 by the court or by counsel for one of the parties shall be
5 excluded from the class unless those persons inform the
6 court in writing, on a date no later than the commence-
7 ment of trial or entry of judgment, that they wish to join
8 the class.

9 (b) CONTENTS OF NOTICE.—In addition to any infor-
10 mation required by applicable Federal or State law, the
11 notice described in this subsection shall—

12 (1) concisely and clearly describe the nature of
13 the action;

14 (2) identify the jurisdiction whose law will gov-
15 ern the action;

16 (3) identify any potential claims that class
17 counsel chose not to pursue so that the action would
18 satisfy class certification requirements; and

19 (4) describe the fee arrangement of class coun-
20 sel.

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

22 Before determining whether to certify a class in a
23 year 2000 action, the court may decide a motion to dis-
24 miss or for summary judgment made by any party if the
25 court concludes that decision will promote the fair and ef-

1 ficient adjudication of the controversy and will not cause
2 undue delay.

3 **SEC. 404. FEDERAL JURISDICTION IN YEAR 2000 CLASS AC-**
4 **TIONS.**

5 (a) REFERENCE.—Whenever in this section an
6 amendment or repeal is expressed in terms of an amend-
7 ment to, or repeal of, a section or other provision, the ref-
8 erence shall be considered to be made to a section or other
9 provision of title 28, United States Code.

10 (b) DIVERSITY JURISDICTION.—Section 1332 is
11 amended by redesignating subsections (b), (c), and (d) as
12 subsections (c), (d), and (e), respectively, and by inserting
13 after subsection (a) the following:

14 “(b)(1) The district courts shall have original juris-
15 diction of any year 2000 action, regardless of the sum or
16 value of the matter in controversy therein, which is
17 brought as a class action and in which—

18 “(A) any member of a proposed plaintiff class
19 is a citizen of a State different from any defendant;

20 “(B) any member of a proposed plaintiff class
21 is a foreign state or a citizen or subject of a foreign
22 state and any defendant is a citizen of a State; or

23 “(C) any member of a proposed plaintiff class
24 is a citizen of a State and any defendant is a citizen
25 or subject of a foreign state.

1 As used in this paragraph, the term ‘foreign state’ has
2 the meaning given that term in section 1603(a).

3 “(2)(A) In a year 2000 action described in paragraph
4 (1) in which—

5 “(i) the substantial majority of the members of
6 all proposed plaintiff classes are citizens of a single
7 State of which the primary defendants are also citi-
8 zens, and

9 “(ii) the claims asserted will be governed pri-
10 marily by the laws of that State,

11 the district court should abstain from hearing such action.

12 “(B) In a year 2000 action described in paragraph
13 (1) in which—

14 “(i) all matters in controversy asserted by the
15 individual members of all proposed plaintiff classes
16 in the aggregate do not exceed the sum or value of
17 \$1,000,000, exclusive of interest and costs,

18 “(ii) the number of members of all proposed
19 plaintiff classes in the aggregate is less than 100, or

20 “(iii) the primary defendants are States, State
21 officials, or other governmental entities against
22 whom the district court may be foreclosed from or-
23 dering relief,

24 the district court may, in its discretion, abstain from hear-
25 ing such action.

1 “(3)(A) Paragraph (1) and section 1453 shall not
2 apply to any class action that is brought under the Securi-
3 ties Act of 1933.

4 “(B) Paragraph (1) and section 1453 shall not apply
5 to a class action described in subparagraph (C) that is
6 based upon the statutory or common law of the State in
7 which the issuer concerned is incorporated (in the case of
8 a corporation) or organized (in the case of any other en-
9 tity).

10 “(C) A class action is described in this subparagraph
11 if it involves—

12 “(i) the purchase or sale of securities by an
13 issuer or an affiliate of an issuer exclusively from or
14 to holders of equity securities of the issuer; or

15 “(ii) any recommendation, position, or other
16 communication with respect to the sale of securities
17 of an issuer that—

18 “(I) is made by or on behalf of the issuer
19 or an affiliate of the issuer to holders of equity
20 securities of the issuer; and

21 “(II) concerns decisions of those equity
22 holders with respect to voting their securities,
23 acting in response to a tender or exchange
24 offer, or exercising dissenters’ or appraisal
25 rights.

1 “(D) As used in this paragraph, the terms ‘issuer’,
 2 ‘security’, and ‘equity security’ have the meanings given
 3 those terms in section 3 of the Securities Exchange Act
 4 of 1934.

5 “(4) As used in this subsection, the term ‘year 2000
 6 action’ has the meaning given that term in section 3 of
 7 the Year 2000 Readiness Act.”.

8 (c) CONFORMING AMENDMENT.—Section 1332(c) (as
 9 redesignated by this section) is amended by inserting after
 10 “Federal courts” the following: “pursuant to subsection
 11 (a) of this section”.

12 (d) DETERMINATION OF DIVERSITY.—Section 1332,
 13 as amended by this section, is further amended by adding
 14 at the end the following:

15 “(f) For purposes of subsection (b), a member of a
 16 proposed class shall be deemed to be a citizen of a State
 17 different from a defendant corporation only if that mem-
 18 ber is a citizen of a State different from all States of which
 19 the defendant corporation is deemed a citizen.”.

20 (e) REMOVAL OF CLASS ACTIONS.—Chapter 89 is
 21 amended by adding after section 1452 the following:

22 **“§ 1453. Removal of class actions**

23 “(a) IN GENERAL.—A year 2000 action which is a
 24 class action may be removed to a district court of the

1 United States in accordance with this chapter, except that
2 such action may be removed—

3 “(1) by any defendant without the consent of
4 all defendants; or

5 “(2) by any plaintiff class member who is not
6 a named or representative class member of the ac-
7 tion for which removal is sought, without the con-
8 sent of all members of such class.

9 “(b) WHEN REMOVABLE.—This section shall apply
10 to any year 2000 action before or after the entry of any
11 order certifying a class.

12 “(c) PROCEDURE FOR REMOVAL.—The provisions of
13 section 1446(a) relating to a defendant removing a case
14 shall apply to a plaintiff removing a case under this sec-
15 tion. With respect to the application of subsection (b) of
16 such section, the requirement relating to the 30-day filing
17 period shall be met if a plaintiff class member who is not
18 a named or representative class member of the action for
19 which removal is sought files notice of removal within 30
20 days after receipt by such class member, through service
21 or otherwise, of the initial written notice of the class action
22 provided at the trial court’s direction.

23 “(d) DEFINITION.—As used in this section, the term
24 ‘year 2000 action’ has the meaning given that term in sec-
25 tion 3 of the Year 2000 Readiness Act.”.

1 (f) REMOVAL LIMITATIONS.—Section 1446(b) is
 2 amended in the second sentence—

3 (1) by inserting after “has become removable”
 4 the following: “, or, in the case of an action remov-
 5 able on the basis of jurisdiction under section
 6 1332(b), from which it may first be ascertained, by
 7 exercising due diligence, that the case is one which
 8 is or has become removable”; and

9 (2) by inserting “(a)” after “section 1332”.

10 (g) TECHNICAL AND CONFORMING AMENDMENTS.—
 11 The table of sections for chapter 89 is amended by adding
 12 after the item relating to section 1452 the following:

“1453. Removal of class actions.”.

13 (h) APPLICATION OF SUBSTANTIVE STATE LAW.—
 14 Nothing in this section or the amendments made by this
 15 section shall alter the substantive law applicable to an ac-
 16 tion to which the amendments made by subsection (b) of
 17 this section apply.

18 (i) PROCEDURE AFTER REMOVAL.—Section 1447 is
 19 amended by adding at the end the following new sub-
 20 section:

21 “(f) If, after removal, the court determines that no
 22 aspect of an action that is subject to its jurisdiction solely
 23 under the provisions of section 1332(b) may be maintained
 24 as a class action under Rule 23 of the Federal Rules of
 25 Civil Procedure, the court shall strike the class allegations

1 from the action and remand the action to the State court.
 2 Upon remand of the action, the period of limitations for
 3 any claim that was asserted in the action on behalf of any
 4 named or unnamed member of any proposed class shall
 5 be deemed tolled to the full extent provided under Federal
 6 law.”.

7 **TITLE V—CLIENT PROTECTION**
 8 **IN CONNECTION WITH YEAR**
 9 **2000 ACTIONS**

10 **SEC. 501. SCOPE.**

11 This title applies to any year 2000 claim or year 2000
 12 action asserted or brought in Federal or State court.

13 **SEC. 502. DEFINITIONS.**

14 In this title:

15 (1) ATTORNEY.—the term “attorney” means
 16 any natural person, professional law association, cor-
 17 poration, or partnership authorized under applicable
 18 State law to practice law.

19 (2) ATTORNEY’S SERVICES.—The term “attor-
 20 ney’s services” means the professional advice or
 21 counseling of or representation by an attorney, but
 22 such term shall not include other assistance in-
 23 curred, directly or indirectly, in connection with an
 24 attorney’s services, such as administrative or sec-
 25 retarial assistance, overhead, travel expenses, wit-

1 ness fees, or preparation by a person other than the
2 attorney of any study, analysis, report, or test.

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

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

12 (5) INITIAL MEETING.—The term “initial meet-
13 ing” means the first conference or discussion be-
14 tween a client and an attorney, whether by telephone
15 or in person, concerning the details, facts, or basis
16 of the plaintiff’s claim.

17 (6) RETAIN.—The term “retain” means the act
18 of a client in engaging an attorney’s services, wheth-
19 er by express or implied agreement, by seeking and
20 obtaining the attorney’s services.

21 **SEC. 503. CONSUMER’S RIGHT TO ELECT HOURLY OR CON-**
22 **TINGENT FEE ARRANGEMENT.**

23 (a) ELECTION OF TERMS.—A plaintiff who retains
24 an attorney with respect to a year 2000 claim or a year
25 2000 action may elect whether to compensate the attor-

1 ney's services in connection with the year 2000 claim or
2 the year 2000 action on an hourly basis or a contingent
3 fee basis, except that—

4 (1) in no event shall an attorney that has been
5 retained on a contingent fee basis be paid a fee
6 greater than the lesser of the attorney's hourly rate
7 or rates disclosed under section 505 multiplied by
8 the total number of hours spent by the attorney in
9 connection with the claim or action or an agreed
10 upon percentage of the total recovery which does not
11 exceed one-third of the total recovery; and

12 (2) in no event shall such an attorney be paid
13 a contingent fee based on a percentage of a settle-
14 ment or judgment obtained for that portion of dam-
15 ages claimed which the defendant offered prior to, or
16 within 90 days after, the filing of the relevant year
17 2000 action.

18 (b) ADDITIONAL LIMITATION.—In no event shall an
19 attorney representing a client in connection with a year
20 2000 claim or a year 2000 action be paid a fee greater
21 than the attorney's hourly rate or rates disclosed under
22 section 505 multiplied by the total number of hours spent
23 by the attorney in connection with the claim or action.

1 **SEC. 504. CONSUMER'S RIGHT TO UP-FRONT DISCLOSURE**
2 **OF INFORMATION REGARDING FEES AND**
3 **SETTLEMENT PROPOSALS.**

4 An attorney retained by a client shall, at the initial
5 meeting (or in the instance of an attorney retained before
6 the effective date of this Act, 30 days after the date of
7 the enactment of this Act), disclose to the client the cli-
8 ent's rights under this title and the client's right to receive
9 a written statement of the information described under
10 sections 505 and 506.

11 **SEC. 505. INFORMATION AFTER INITIAL MEETING.**

12 (a) WRITTEN DISCLOSURE OF FEES.—Within 30
13 days after the disclosure described under section 504, an
14 attorney retained by a client shall provide a written state-
15 ment to the client setting forth—

16 (1) the estimated number of hours of the attor-
17 ney's services that will be spent—

18 (A) settling or attempting to settle the
19 year 2000 claim or year 2000 action; and

20 (B) handling the year 2000 claim or year
21 2000 action through trial;

22 (2) the attorney's hourly fee for services in pur-
23 suing the year 2000 claim or year 2000 action and
24 any conditions, limitations, restrictions, or other
25 qualifications on the fee, including likely expenses
26 and the client's obligation for those expenses and

(b) CONSUMER'S RIGHT TO TIMELY UPDATED INFORMATION ABOUT FEES.—In addition to the requirements contained in subsection (a), the attorney shall also render monthly statements to the client containing a description of hourly charges and expenses incurred in the pursuit of the client's year 2000 claim or year 2000 action by each attorney assigned to the client's matter.

22 An attorney retained by a client shall immediately
23 transmit all settlement offers to the client with an esti-
24 mate of the likelihood of achieving a more or less favorable
25 resolution to the year 2000 claim or year 2000 action, the

1 likely timing of such resolution, and the likely attorney's
2 fees and expenses required to obtain such a resolution. An
3 attorney retained by a client shall, within a reasonable
4 time not later than 30 days after the date on which the
5 year 2000 claim or year 2000 action is finally settled or
6 adjudicated, provide a written statement to the client
7 containing—

8 (1) the actual number of hours expended by
9 each attorney on behalf of the client in connection
10 with the year 2000 claim or year 2000 action and
11 such attorney's hourly rate; and

12 (2) the total amount of the hourly fees or total
13 contingent fee for the attorney's services in connec-
14 tion with the year 2000 claim or year 2000 action.

15 **SEC. 507. CLASS ACTIONS.**

16 An attorney representing a class in a year 2000 ac-
17 tion shall make the disclosures required under this title
18 to the presiding judge. The presiding judge shall, at the
19 outset of the year 2000 action, determine the appropriate
20 hourly rate, which in no event shall exceed \$1,000 per
21 hour, and the maximum percentage of the recovery to be
22 paid in attorney's fees, which in no event shall exceed one
23 third of the recovery. Notwithstanding any other provision
24 of law or agreement to the contrary, the presiding judge
25 shall award attorney's fees only pursuant to this title.

1 **SEC. 508. ENFORCEMENT OF CONSUMER PROTECTION**
 2 **RULES IN YEAR 2000 CLAIMS AND ACTIONS.**

3 A client whose attorney fails to comply with this title
 4 may file a civil action for damages in the court in which
 5 the year 2000 claim or year 2000 action was filed or could
 6 have been filed or other court of competent jurisdiction.
 7 The remedy provided by this section is in addition to any
 8 other available remedy or penalty.

9 **TITLE VI—ASSISTANCE TO**
 10 **SMALL BUSINESSES FOR PRE-**
 11 **VENTING YEAR 2000 COM-**
 12 **PUTER FAILURES**

13 **SECTION 601. SHORT TITLE.**

14 This title may be cited as the “Small Business Year
 15 2000 Readiness Act”.

16 **SEC. 602. FINDINGS.**

17 Congress finds that—

18 (1) the failure of many computer programs to
 19 recognize the year 2000 will have extreme negative
 20 financial consequences in the year 2000 and in sub-
 21 sequent years for both large and small businesses;

22 (2) small businesses are behind larger busi-
 23 nesses in implementing corrective changes to their
 24 automated systems—85 percent of businesses with
 25 200 employees or fewer have not commenced

1 inventorying the changes they must make to their
 2 automated systems to avoid year 2000 problems;

3 (3) many small businesses do not have access to
 4 the capital necessary to fix mission critical auto-
 5 mated systems; and

6 (4) the failure of a large number of domestic
 7 small businesses will have a highly detrimental effect
 8 on the American economy in the year 2000 and sub-
 9 sequent years.

10 **SEC. 603. YEAR 2000 COMPUTER FAILURE LOAN GUARAN-**
 11 **TEE PROGRAM.**

12 (a) PROGRAMS ESTABLISHED.—Section 7(a) of the
 13 Small Business Act (15 U.S.C. 636(a)) is amended by
 14 adding at the end the following:

15 “(27) YEAR 2000 COMPUTER FAILURE PILOT
 16 PROGRAM.—

17 “(A) DEFINITIONS.—In this paragraph—

18 “(i) the term ‘eligible lender’ means
 19 any lender designated by the Administra-
 20 tion as eligible to participate in—

21 “(I) the program (commonly re-
 22 ferred to as the ‘Preferred Lenders
 23 Program’) authorized by the proviso
 24 in section 5(b)(7); or

1 “(II) the program (commonly re-
2 ferred to as the ‘Certified Lenders
3 Program’) authorized in paragraph
4 (19); and

5 “(ii) the term ‘year 2000 computer
6 failure’ means any failure by any device or
7 system (including, without limitation, any
8 computer system and any microchip or in-
9 tegrated circuit embedded in another de-
10 vice or product), or any software,
11 firmware, or other set of collection of proc-
12 essing instructions, however constructed, in
13 processing, calculating, comparing, se-
14 quencing, displaying, storing, transmitting,
15 or receiving date-related data, including,
16 without limitation, failure in accurately
17 dealing with or failure in accurately ac-
18 counting for transitions or comparisons
19 from, into, and between the 20th and the
20 21st centuries, or during the years 1999
21 and 2000, failure to recognize or accu-
22 rately process any specific date, and failure
23 to accurately account for the year 2000’s
24 leap year status.

1 “(B) ESTABLISHMENT OF PROGRAM.—The
2 Administration shall—

3 “(i) establish a pilot program, under
4 which the Administration shall guarantee
5 loans made by eligible lenders to small
6 business concerns in accordance with this
7 subsection to allow such concerns to ad-
8 dress year 2000 computer failures; and

9 “(ii) notify eligible lenders of the es-
10 tablishment of the program under this
11 paragraph.

12 “(C) USE OF FUNDS.—A small business
13 concern that receives a loan guaranteed under
14 this paragraph shall use the proceeds of the
15 loan solely to address year 2000 computer fail-
16 ures, including the repair or acquisition of in-
17 formation technology systems and other auto-
18 mated systems.

19 “(D) MAXIMUM AMOUNT.—The total
20 amount of a loan made to a small business con-
21 cern and guaranteed under this paragraph shall
22 not exceed \$50,000.

23 “(E) GUARANTEE LIMIT.—The guarantee
24 percentage of a loan guaranteed under this
25 paragraph shall not exceed 50 percent of the

1 balance of the financing outstanding at the time
2 of disbursement of the loan.

3 “(F) REPORT.—The Administration shall
4 annually submit to the Committees on Small
5 Business of the House of Representatives and
6 the Senate a report on the program authorized
7 by this paragraph. Such report shall include in-
8 formation relating to—

9 “(i) the number and amount of loans
10 guaranteed under this paragraph;

11 “(ii) whether the loans guaranteed
12 were made to repair or replace information
13 technology and other automated systems;
14 and

15 “(iii) the number of eligible lenders
16 participating in the program.”.

17 (b) REGULATIONS.—Not later than 60 days after the
18 date of enactment of this title, the Administrator of the
19 Small Business Administration shall issue final regula-
20 tions to carry out the program established by section
21 7(a)(27) of the Small Business Act, as added by this sec-
22 tion.

23 (c) REPEAL.—Effective on October 1, 2001, this
24 section and the amendment made by this section are
25 repealed.

1 **SEC. 604. PILOT PROGRAM REQUIREMENTS.**

2 Section 7(a)(25) of the Small Business Act (15
3 U.S.C. 636(a)(25)) is amended by adding at the end the
4 following:

5 “(D) NOTIFICATION OF CHANGE.—Not
6 later than 30 days before initiating any new
7 pilot program or making any change in a pilot
8 program under this subsection that may affect
9 the subsidy rate estimates for the loan program
10 under this subsection, the Administration shall
11 notify the Committees on Small Business of the
12 House of Representatives and the Senate. Such
13 notification shall include—

14 “(i) a description of the proposed new
15 program or the change to a program; and

16 “(ii) an estimation, which shall be de-
17 veloped by the Administration in consulta-
18 tion with the Director of the Office of
19 Management and Budget, of the effect
20 that the new program or the change to a
21 program will have on the subsidy rate.

22 “(E) REPORT ON PILOT PROGRAMS.—The
23 Administration shall annually submit to the
24 Committees on Small Business of the House of
25 Representatives and the Senate a report on

1 each pilot program under this subsection. Such
2 report shall include information relating to—

3 “(i) the number and amount of loans
4 made under the pilot program;

5 “(ii) the number of lenders participat-
6 ing in the pilot program; and

7 “(iii) the default rate, delinquency
8 rate, and recovery rate for loans under the
9 pilot program, as compared to those rates
10 for other loan programs under this sub-
11 section.”.

12 **SEC. 605. SUSPENSION OF PENALTIES FOR CERTAIN YEAR**
13 **2000 FAILURES BY SMALL BUSINESS CON-**
14 **CERNS.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “agency” means any executive
17 agency, as defined in section 105 of title 5, United
18 States Code, that has the authority to impose civil
19 penalties on small business concerns;

20 (2) the term “first-time violation” means any
21 first-time violation, resulting from a year 2000 fail-
22 ure, of a Federal requirement regarding the collec-
23 tion of information; and

1 (3) the term “small business concern” has the
2 meaning given such term in section 3 of the Small
3 Business Act (15 U.S.C. 632).

4 (b) ESTABLISHMENT OF LIAISON.—Not later than
5 30 days after the date of enactment of this title, the Ad-
6 ministrators of the Small Business Administration shall es-
7 tablish 1 point of contact in the Administration to act as
8 a liaison between the Administration and small business
9 concerns with respect to problems arising out of year 2000
10 failures and compliance with Federal requirements regard-
11 ing the collection of information.

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

15 (d) EXCEPTIONS.—An agency may impose civil pen-
16 alties authorized under Federal law on a small business
17 concern for a first-time violation if—

18 (1) the agency determines that the violation has
19 caused actual serious harm to the public;

20 (2) the agency determines that failure to im-
21 pose a civil penalty would impede or interfere with
22 the detection of intentional wrongful activity;

23 (3) the violation is a violation of an internal
24 revenue law or a law concerning the assessment or
25 collection of any tax, debt, revenue, or receipt;

1 (4) the small business concern fails to correct
2 the violation not later than 6 months after receiving
3 written notification of the violation from the agency;
4 or

5 (5) the agency determines that the violation
6 presents an imminent and substantial danger to the
7 public health or safety.

8 (e) DANGER TO PUBLIC HEALTH AND SAFETY.—

9 (1) WAIVER OF PENALTIES.—An agency may
10 waive any civil penalty imposed pursuant to sub-
11 section (d)(5) if the violation for which the penalty
12 is imposed is corrected not later than 30 days after
13 the agency provides written notice of the violation to
14 the small business concern.

15 (2) STANDARDS FOR WAIVER.—In making a de-
16 termination whether to waive a civil penalty under
17 paragraph (1) the agency shall take into account all
18 of the facts and circumstances regarding the first-
19 time violation, including—

20 (A) the nature and seriousness of the vio-
21 lation, including whether it is technical or inad-
22 vertent or involves willful criminal conduct;

23 (B) whether the small business concern
24 has made and is making a good faith effort to
25 comply with applicable laws and to remedy the

1 violation in the shortest practicable period of
2 time; and

3 (C) whether the small business concern has
4 obtained a significant economic benefit from the
5 violation.

6 (3) CONGRESSIONAL NOTIFICATION REQUIRE-
7 MENT.—If an agency imposes on a small business
8 concern a civil penalty pursuant to subsection (d)(5)
9 without providing the small business concern with
10 the 30 days to correct the violation authorized under
11 paragraph (1), the agency shall notify Congress of
12 the penalty not later than 60 days after it is im-
13 posed.

14 (f) STATE PENALTIES TO CONFORM.—Notwith-
15 standing any other provision of law, no State may impose
16 on a small business concern any civil penalty inconsistent
17 with this section.

○