

Calendar No. 34

106TH CONGRESS
1ST Session

S. 96

[Report No. 106-10]

A BILL

To regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of the year's date.

MARCH 10, 1999

Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. MCCAIN (for himself and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 10, 1999

Reported by Mr. MCCAIN, with an amendment

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

A BILL

To regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of the year's date.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Y2K Act”.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) **Y2K ACTION.**—The term “Y2K action”
6 means a civil action commenced in any Federal or
7 State court for a cause of action arising out of a
8 Y2K failure but does include an action to recover
9 damages for personal injury (excluding emotional
10 harm) or wrongful death.

11 (2) **Y2K FAILURE.**—The term “Y2K failure”
12 means a systems product failure caused by the in-
13 ability of a computer system, program, or software’s
14 failure to accurately store, process, provide, or re-
15 ceive data containing the year-2000 date.

16 (3) **Y2K-COMPLIANT.**—The term “Y2K-compli-
17 ant” means—

18 (A) with respect to an information tech-
19 nology product, that the product does not have
20 a Y2K failure; and

21 (B) with respect to a business, that none
22 of that business’s information technology prod-
23 ucts that materially affects the business’s ca-
24 pacity to deliver goods and services has a Y2K
25 failure.

1 (4) INFORMATION TECHNOLOGY PRODUCT.—

2 The term “information technology product” means a
3 computer, a computer program, or computer soft-
4 ware, or product using a computer program, chip, or
5 computer software.

6 **SEC. 3. APPLICABILITY; PREEMPTION.**

7 (a) APPLICABILITY TO Y2K ACTIONS.—This Act ap-
8 plies to any Y2K action, commenced after the date of en-
9 actment of this Act, brought in a Federal or State court.

10 (b) SCOPE OF PREEMPTION.—This Act supersedes
11 any State law regarding recovery for harm caused by a
12 Y2K failure only to the extent that this Act establishes
13 a rule of law applicable to any such recovery which is in-
14 consistent with State law. Any issue arising under this Act
15 that is not governed by any such rule of law shall be gov-
16 erned by applicable State or Federal law.

17 (c) ACTIONS FOR PERSONAL INJURY.—This Act does
18 not apply to a civil action brought for personal injury to
19 the extent that the action is based on physical injury.

20 **SEC. 4. EXCLUSIVE REMEDIES.**

21 (a) IN GENERAL.—The remedies provided by this Act
22 are the exclusive remedies available to a plaintiff in a Y2K
23 action, except as may be otherwise provided in a contract
24 to which the plaintiff and the defendant are parties.

1 (b) ~~DEFENDANT'S OPPORTUNITY TO FIX PROBLEM.~~—A Y2K action may not proceed to trial until—

3 (1) the plaintiff has notified the defendant in
4 writing, describing the Y2K failure with particular-
5 ity; and

6 (2) the plaintiff has afforded the defendant the
7 opportunity, including reasonable access to comput-
8 ers and computer software affected by the Y2K fail-
9 ure described in the notice, to fix the problem.

10 **SEC. 5. DAMAGES.**

11 (a) ~~ECONOMIC LOSS.~~—Except as otherwise provided
12 in this section, damages awarded in a Y2K action are lim-
13 ited to economic loss.

14 (b) ~~OTHER DAMAGES.~~—

15 (1) ~~IN GENERAL.~~—Damages in a Y2K action
16 (including punitive damages) other than for eco-
17 nomic loss may not exceed the greater of—

18 (A) 3 times the amount awarded for eco-
19 nomic loss; or

20 (B) \$250,000.

21 (2) ~~SPECIAL RULE.~~—In the case of a
22 defendant—

23 (A) who—

24 (i) is sued in his or her capacity as a
25 individual; and

1 (ii) whose net worth does not exceed
2 \$500,000; or

3 (B) that is an unincorporated business, a
4 partnership, corporation, association, unit of
5 local government, or organization with fewer
6 than 25 full-time employees;

7 paragraph (1) shall be applied by substituting
8 “\$50,000” for “\$250,000” in subparagraph (B).

9 (c) PUNITIVE DAMAGES.—No amount shall be award-
10 ed a plaintiff in a Y2K action for punitive damages—

11 (1) except to the extent authorized by State
12 law; and

13 (2) unless the plaintiff proves that the economic
14 damages suffered resulted from conscious and fla-
15 grant disregard, rather than mere negligence, on the
16 part of the defendant.

17 (d) GOOD FAITH LIMITATION.—Damages in a Y2K
18 action may not be awarded, except for economic loss,
19 against any defendant who demonstrates that the defend-
20 ant exercised due diligence and reasonable care to prevent
21 or remedy the Y2K failure according to generally accepted
22 standards of care and effort in the business activity in
23 which the defendant was engaged.

1 **SEC. 6. SEVERAL LIABILITY.**

2 The liability of more than 1 defendant in a Y2K ac-
3 tion may be several but may not be joint.

4 **SEC. 7. APPOINTMENT OF SPECIAL MASTERS FOR Y2K AC-**
5 **TIONS.**

6 Any District Court of the United States in which a
7 Y2K action is pending may appoint a special master to
8 hear the matter and to make findings of fact and conclu-
9 sions of law in accordance with Rule 53 of the Federal
10 Rules of Civil Procedure.

11 **SEC. 8. LIABILITY RULES APPLICABLE TO PRODUCT SELL-**
12 **ERS, RENTERS, AND LESSORS.**

13 (a) GENERAL RULE.—

14 (1) IN GENERAL.—In any Y2K action, an infor-
15 mation technology product seller other than a manu-
16 facturer shall be liable to a claimant only if the
17 claimant establishes—

18 (A) that—

19 (i) the information technology product
20 that allegedly caused the harm that is the
21 subject of the complaint was sold, rented,
22 or leased by the information technology
23 product seller;

24 (ii) the information technology prod-
25 uct seller failed to exercise reasonable care

1 with respect to the information technology
2 product; and

3 (iii) the failure to exercise reasonable
4 care was a proximate cause of harm to the
5 claimant;

6 (B) that—

7 (i) the information technology product
8 seller made an express warranty applicable
9 to the information technology product that
10 allegedly caused the harm that is the sub-
11 ject of the complaint, independent of any
12 express warranty made by a manufacturer
13 as to the same information technology
14 product;

15 (ii) the information technology prod-
16 uct failed to conform to the warranty; and

17 (iii) the failure of the information
18 technology product to conform to the war-
19 ranty caused harm to the claimant; or

20 (C) that—

21 (i) the information technology product
22 seller engaged in intentional wrongdoing,
23 as determined under applicable State law;
24 and

1 (ii) such intentional wrongdoing was a
 2 proximate cause of the harm that is the
 3 subject of the complaint.

4 (2) REASONABLE OPPORTUNITY FOR INSPEC-
 5 TION.—For purposes of paragraph (1)(A)(ii), an in-
 6 formation technology product seller shall not be con-
 7 sidered to have failed to exercise reasonable care
 8 with respect to an information technology product
 9 based upon an alleged failure to inspect the informa-
 10 tion technology product—

11 (A) if the failure occurred because there
 12 was no reasonable opportunity to inspect the in-
 13 formation technology product; or

14 (B) if the inspection, in the exercise of rea-
 15 sonable care, would not have revealed the as-
 16 pect of the information technology product
 17 which allegedly caused the claimant's harm.

18 (b) SPECIAL RULE.—

19 (1) IN GENERAL.—An information technology
 20 product seller shall be liable as a manufacturer of an
 21 information technology product for harm caused by
 22 the information technology product if—

23 (A) the manufacturer is not subject to
 24 service of process under the laws of any State
 25 in which the action may be brought; or

1 ~~(B)~~ the court determines that the claimant
 2 would be unable to enforce a judgment against
 3 the manufacturer.

4 ~~(2)~~ STATUTE OF LIMITATIONS.—For purposes
 5 of this subsection only, the statute of limitations ap-
 6 plicable to claims asserting liability of an informa-
 7 tion technology product seller as a manufacturer
 8 shall be tolled from the date of the filing of a com-
 9 plaint against the manufacturer to the date that
 10 judgment is entered against the manufacturer.

11 ~~(c)~~ RENTED OR LEASED PRODUCTS.—Any person
 12 engaged in the business of renting or leasing an informa-
 13 tion technology product (other than a person that is an
 14 information technology product manufacturer or a seller
 15 liable as a manufacturer under paragraph ~~(1)~~) shall be
 16 subject to liability in a Y2K action, but any person en-
 17 gaged in the business of renting or leasing an information
 18 technology product shall not be liable to a claimant for
 19 the acts of another solely by reason of ownership of such
 20 information technology product.

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

22 ~~(a)~~ *SHORT TITLE.*—*This Act may be cited as the “Y2K*
 23 *Act”.*

24 ~~(b)~~ *TABLE OF SECTIONS.*—*The table of sections for this*
 25 *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.

TITLE I—OPPORTUNITY TO RESOLVE Y2K PROBLEMS.

Sec. 101. Pre-filing notice.
Sec. 102. Pleading requirements.
Sec. 103. Duty to mitigate.
Sec. 104. Proportionate liability.

TITLE II—Y2K ACTIONS INVOLVING CONTRACT-RELATED CLAIMS.

Sec. 201. Contracts enforced.
Sec. 202. Defenses.
Sec. 203. Damages limitation .
Sec. 204. Mixed actions.

TITLE III—Y2K ACTIONS INVOLVING TORT CLAIMS.

Sec. 301. Damages in tort claims.
Sec. 302. Certain defenses.
Sec. 303. Liability of officers and directors.

TITLE IV—Y2K CLASS ACTIONS.

Sec. 401. Minimum injury requirement.
Sec. 402. Notification.
Sec. 403. Forum for Y2K class actions.

1 SEC. 2. FINDINGS AND PURPOSES.

2 *The Congress finds that:*

3 *(1) The majority of responsible business enter-*
 4 *prises in the United States are committed to working*
 5 *in cooperation with their contracting partners to-*
 6 *wards the timely and cost-effective resolution of the*
 7 *many technological, business, and legal issues associ-*
 8 *ated with the Y2K date change.*

9 *(2) Congress seeks to encourage businesses to con-*
 10 *centrate their attention and resources in short time*
 11 *remaining before January 1, 2000, on addressing, as-*
 12 *sessing, remediating, and testing their Y2K problems,*

1 *and to minimize any possible business disruptions as-*
2 *sociated with the Y2K issues.*

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

10 *(4) Y2K issues will potentially affect practically*
11 *all business enterprises to at least some degree, giving*
12 *rise possibly to a large number of disputes.*

13 *(5) Resorting to the legal system for resolution of*
14 *Y2K problems is not feasible for many businesses,*
15 *particularly small businesses, because of its complex-*
16 *ity and expense.*

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

23 *(7) Congress recognizes that every business in the*
24 *United States should be concerned that widespread*
25 *and protracted Y2K litigation may threaten the net-*

1 *work of valued and trusted business relationships that*
2 *are so important to the effective functioning of the*
3 *world economy, and which may put unbearable*
4 *strains on an overburdened and sometime ineffective*
5 *judicial system.*

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

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

19 **SEC. 3. DEFINITIONS.**

20 *In this Act:*

21 (1) *Y2K ACTION.*—*The term “Y2K action”*
22 *means a civil action commenced in any Federal or*
23 *State court in which the plaintiff’s alleged harm or*
24 *injury resulted directly or indirectly from an actual*
25 *or potential Y2K failure, or a claim or defense of a*

1 *defendant is related directly or indirectly to an actual*
2 *or potential Y2K failure.*

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

11 (A) *to deal with or account for transitions*
12 *or comparisons from, into, and between the years*
13 *1999 and 2000 accurately;*

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

16 (C) *accurately to account for the year*
17 *2000’s status as a leap year, including recogni-*
18 *tion and processing of the correct date on Feb-*
19 *ruary 29, 2000.*

20 (3) *ACTUAL DAMAGES.*—*The term “actual dam-*
21 *ages” means direct damages for injury to tangible*
22 *property, and the cost of repairing or replacing prod-*
23 *ucts that have a material defect.*

24 (4) *ECONOMIC LOSS.*—*Except as otherwise spe-*
25 *cifically provided in a written contract between the*

1 *plaintiff and the defendant in a Y2K action (and sub-*
 2 *ject to applicable State law), the term “economic*
 3 *loss”—*

4 *(A) means amounts awarded to compensate*
 5 *an injured party for any loss other than for per-*
 6 *sonal injury or damage to tangible property*
 7 *(other than property that is the subject of the*
 8 *contract); and*

9 *(B) includes amounts awarded for—*

10 *(i) lost profits or sales;*

11 *(ii) business interruption;*

12 *(iii) losses indirectly suffered as a re-*
 13 *sult of the defendant’s wrongful act or omis-*
 14 *sion;*

15 *(iv) losses that arise because of the*
 16 *claims of third parties;*

17 *(v) losses that must be pleaded as spe-*
 18 *cial damages; and*

19 *(vi) consequential damages (as defined*
 20 *in the Uniform Commercial Code or analo-*
 21 *gous State commercial law); but*

22 *(C) does not include actual damages.*

23 *(5) MATERIAL DEFECT.—The term “material de-*
 24 *fect” means a defect in any item, whether tangible or*
 25 *intangible, or in the provision of a service, that sub-*

1 *stantially prevents the item or service from operating*
 2 *or functioning as designed or intended. The term*
 3 *“material defect” does not include a defect that—*

4 *(A) has an insignificant or de minimis ef-*
 5 *fect on the operation or functioning of an item*
 6 *or computer program;*

7 *(B) affects only on a component of an item*
 8 *or program that, as a whole, substantially oper-*
 9 *ates or functions as designed; or*

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

12 (6) *PERSONAL INJURY.—The term “personal*
 13 *injury”—*

14 *(A) means any physical injury to a natural*
 15 *person, including death of the person; but*

16 *(B) does not include mental suffering, emo-*
 17 *tional distress, or like elements of injury that do*
 18 *not constitute physical harm to a natural per-*
 19 *son.*

20 (7) *STATE.—The term “State” means any State*
 21 *of the United States, the District of Columbia, Com-*
 22 *monwealth of Puerto Rico, the Northern Mariana Is-*
 23 *lands, the United States Virgin Islands, Guam, Amer-*
 24 *ican Samoa, and any other territory or possession of*

1 *the United States, and any political subdivision*
2 *thereof.*

3 (8) *CONTRACT.*—*The term “contract” means a*
4 *contract, tariff, license, or warranty.*

5 (9) *PERSON.*—

6 (A) *IN GENERAL.*—*The term “person” has*
7 *the meaning given to that term by section 1 of*
8 *title 1, United States Code.*

9 (B) *GOVERNMENT ENTITIES.*—*The term*
10 *“person” includes an agency, instrumentality, or*
11 *other entity of Federal, State, or local govern-*
12 *ment (including multijurisdictional agencies, in-*
13 *strumentalities, and entities) when that agency,*
14 *instrumentality, or other entity is a plaintiff or*
15 *a defendant in a Y2K action.*

16 (10) *ALTERNATIVE DISPUTE RESOLUTION.*—*The*
17 *term “alternative dispute resolution” means any*
18 *process or proceeding, other than adjudication by a*
19 *court or in an administrative proceeding, in which a*
20 *neutral third party participates to assist in the reso-*
21 *lution of issues in controversy, through processes such*
22 *as early neutral evaluation, mediation, minitrial,*
23 *and arbitration.*

1 **SEC. 4. APPLICATION OF ACT.**

2 (a) *GENERAL RULE.*—*This Act applies to any Y2K*
3 *action brought in a State or Federal court after February*
4 *22, 1999.*

5 (b) *NO NEW CAUSE OF ACTION CREATED.*—*Nothing*
6 *in this Act creates a new cause of action under Federal or*
7 *State law.*

8 (c) *ACTIONS 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) *WRITTEN CONTRACT CONTROLS.*—*The provisions*
12 *of this Act do not supersede a valid, enforceable written con-*
13 *tract between a plaintiff and a defendant in a Y2K action.*

14 (e) *PREEMPTION OF STATE LAW.*—*This Act supersedes*
15 *State law to the extent that it establishes a rule of law ap-*
16 *plicable to a Y2K action that is inconsistent with State law.*

17 **SEC. 5. PUNITIVE DAMAGES LIMITATIONS.**

18 (a) *IN GENERAL.*—*In any Y2K action in which puni-*
19 *tive damages may be awarded under applicable State law,*
20 *the defendant shall not be liable for punitive damages unless*
21 *the plaintiff proves by clear and convincing evidence that*
22 *the defendant acted with conscious and flagrant disregard*
23 *for the rights and property of others.*

24 (b) *CAPS ON PUNITIVE DAMAGES.*—

1 (1) *IN GENERAL.*—*Punitive damages against a*
2 *defendant in such a Y2K action may not exceed the*
3 *larger of—*

4 (A) *3 times the amount awarded for actual*
5 *damages; or*

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

7 (2) *SPECIAL RULE.*—*In the case of a*
8 *defendant—*

9 (A) *who—*

10 (i) *is sued in his or her capacity as a*
11 *individual; and*

12 (ii) *whose net worth does not exceed*
13 *\$500,000; or*

14 (B) *that is an unincorporated business, a*
15 *partnership, corporation, association, unit of*
16 *local government, or organization with fewer*
17 *than 25 full-time employees,*

18 *paragraph (1) shall be applied by substituting*
19 *“smaller” for “larger”.*

20 (c) *GOVERNMENT ENTITIES.*—*Punitive damages in*
21 *such a Y2K action may not be awarded against a person*
22 *described in section 3(8)(B).*

1 **TITLE I—OPPORTUNITY TO**
2 **RESOLVE Y2K PROBLEMS**

3 **SEC. 101. PRE-FILING NOTICE.**

4 (a) *IN GENERAL.*—*Before commencing a Y2K action,*
5 *except an action that seeks only injunctive relief, a prospec-*
6 *tive plaintiff with a Y2K claim shall serve on each prospec-*
7 *tive defendant in that action a written notice that identifies*
8 *with particularity—*

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

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

13 (3) *the remedy sought by the prospective plain-*
14 *tiff;*

15 (4) *the basis upon which the prospective plaintiff*
16 *seeks that remedy; and*

17 (5) *the name, title, address, and telephone num-*
18 *ber of any individual who has authority to negotiate*
19 *a resolution of the dispute on behalf of the prospective*
20 *plaintiff.*

21 (b) *DELAY OF ACTION.*—*Except as provided in sub-*
22 *section (d), a prospective plaintiff may not commence a*
23 *Y2K action in Federal or State court until the expiration*
24 *of 90 days from the date of service of the notice required*
25 *by subsection (a).*

1 (c) *RESPONSE TO NOTICE.*—Within 30 days after re-
 2 *ceipt of the notice specified in subsection (a), each prospec-*
 3 *tive defendant shall serve on each prospective plaintiff a*
 4 *written statement acknowledging receipt of the notice, and*
 5 *proposing the actions it has taken or will take to address*
 6 *the problem identified by the prospective plaintiff. The writ-*
 7 *ten statement shall state whether the prospective defendant*
 8 *is willing to engage in alternative dispute resolution.*

9 (d) *FAILURE TO RESPOND.*—If a prospective
 10 *defendant—*

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

14 (2) *does not describe the action, if any, the pro-*
 15 *spective defendant will take to address the problem*
 16 *identified by the prospective plaintiff,*

17 *then the 90-day period specified in subsection (a) will ter-*
 18 *minate at the end of the 30-day period as to that prospective*
 19 *defendant and the prospective plaintiff may commence its*
 20 *action against that prospective defendant.*

21 (e) *FAILURE TO PROVIDE NOTICE.*—If a defendant de-
 22 *termines that a plaintiff has filed a Y2K action without*
 23 *providing the notice specified in subsection (a) and without*
 24 *awaiting the expiration of the 90-day period specified in*
 25 *subsection (b), the defendant may treat the plaintiff's com-*

1 *plaint as such a notice by so informing the court and the*
2 *plaintiff. If any defendant elects to treat the complaint as*
3 *such a notice—*

4 (1) *the court shall stay all discovery and all*
5 *other proceedings in the action for 90 days after filing*
6 *of the complaint; and*

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

9 (f) **EFFECT OF CONTRACTUAL WAITING PERIODS.**—*In*
10 *cases in which a contract requires notice of nonperformance*
11 *and provides for a period of delay prior to the initiation*
12 *of suit for breach or repudiation of contract, the period of*
13 *delay provided in the contract is controlling over the wait-*
14 *ing period specified in subsections (a) and (e).*

15 (g) **STATE LAW CONTROLS ALTERNATIVE METHODS.**—
16 *Nothing in this section supersedes or otherwise preempts*
17 *any State law or rule of civil procedure with respect to the*
18 *use of alternative dispute resolution for Y2K actions.*

19 **SEC. 102. PLEADING REQUIREMENTS.**

20 (a) **NATURE AND AMOUNT OF DAMAGES.**—*In all Y2K*
21 *actions in which damages are requested, the complaint shall*
22 *provide specific information as to the nature and amount*
23 *of each element of damages and the factual basis for the*
24 *damages calculation.*

1 (b) *MATERIAL DEFECTS.*—*In any Y2K action in*
 2 *which the plaintiff alleges that a product or service is defec-*
 3 *tive, the complaint shall contain specific information re-*
 4 *garding the manifestations of the material defects and the*
 5 *facts supporting a conclusion that the defects are material.*

6 (c) *REQUIRED STATE OF MIND.*—*In any Y2K action*
 7 *in which a claim is asserted on which the plaintiff may*
 8 *prevail only on proof that the defendant acted with a par-*
 9 *ticular state of mind, the complaint shall, with respect to*
 10 *each element of that claim, state with particularity the facts*
 11 *giving rise to a strong inference that the defendant acted*
 12 *with the required state of mind.*

13 **SEC. 103. DUTY TO MITIGATE.**

14 *Damages awarded in any Y2K action shall exclude*
 15 *compensation for damages the plaintiff could reasonably*
 16 *have avoided in light of any disclosure or other information*
 17 *of which the plaintiff was, or reasonably could have been,*
 18 *aware, including reasonable efforts made by a defendant to*
 19 *make information available to purchasers or users of the*
 20 *defendant's product or services concerning means of rem-*
 21 *edying or avoiding Y2K failure.*

22 **SEC. 104. PROPORTIONATE LIABILITY.**

23 (a) *IN GENERAL.*—*A person against whom a final*
 24 *judgment is entered in a Y2K action shall be liable solely*
 25 *for the portion of the judgment that corresponds to the rel-*

1 *ative and proportional responsibility of that person. In de-*
 2 *termining the percentage of responsibility of any defendant,*
 3 *the trier of fact shall determine that percentage as a per-*
 4 *centage of the total fault of all persons, including the plain-*
 5 *tiff, who caused or contributed to the total loss incurred by*
 6 *the plaintiff.*

7 (b) *SEVERAL LIABILITY.—Liability in a Y2K action*
 8 *shall be several but not joint.*

9 **TITLE II—Y2K ACTIONS INVOLV-**
 10 **ING CONTRACT-RELATED**
 11 **CLAIMS**

12 **SEC. 201. CONTRACTS ENFORCED.**

13 *In any Y2K action, any written term or condition of*
 14 *a valid and enforceable contract between the plaintiff and*
 15 *the defendant, including limitations or exclusions of liabil-*
 16 *ity and disclaimers of warranty, is fully enforceable, unless*
 17 *the court determines that the contract as a whole is unen-*
 18 *forceable. If the contract is silent with respect to any mat-*
 19 *ter, the interpretation of the contract with respect to that*
 20 *matter shall be determined by applicable law in force at*
 21 *the time the contract was executed.*

22 **SEC. 202. DEFENSES.**

23 (a) *REASONABLE EFFORTS.—In any Y2K action in*
 24 *which breach of contract is alleged, in addition to any other*
 25 *rights provided by applicable law, the party against whom*

1 *the claim of breach is asserted shall be allowed to offer evi-*
 2 *dence that its implementation of the contract, or its efforts*
 3 *to implement the contract, were reasonable in light of the*
 4 *circumstances for the purpose of limiting or eliminating the*
 5 *defendant's liability.*

6 (b) *IMPOSSIBILITY OR COMMERCIAL IMPRACTICABIL-*
 7 *ITY.—In any Y2K action in which breach of contract is*
 8 *alleged, the applicability of the doctrines of impossibility*
 9 *and commercial impracticability shall be determined by ap-*
 10 *plicable law in existence on January 1, 1999, and nothing*
 11 *in this Act shall be construed as limiting or impairing a*
 12 *party's right to assert defenses based upon such doctrines.*

13 **SEC. 203. DAMAGES LIMITATION.**

14 *In any Y2K action for breach or repudiation of con-*
 15 *tract, no party may claim, nor be awarded, consequential*
 16 *or punitive damages unless such damages are allowed—*

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

18 (2) *if the contract is silent on such damages, by*
 19 *operation of State law at the time the contract was*
 20 *executed or by operation of Federal law.*

21 **SEC. 204. MIXED ACTIONS.**

22 *If a Y2K action includes claims based on breach of*
 23 *contract and tort or other noncontract claims, then this title*
 24 *shall apply to the contract-related claims and title III shall*
 25 *apply to the tort or other noncontract claims.*

1 **TITLE III—Y2K ACTIONS**
2 **INVOLVING TORT CLAIMS**

3 **SEC. 301. DAMAGES IN TORT CLAIMS.**

4 *A party to a Y2K action making a tort claim may*
5 *not recover damages for economic loss unless—*

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

9 (2) *such losses result directly from a personal in-*
10 *jury claim resulting from the Y2K failure; or*

11 (3) *such losses result directly from damage to*
12 *tangible property caused by the Y2K failure (other*
13 *than damage to property that is the subject of the*
14 *contract),*

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

17 **SEC. 302. CERTAIN DEFENSES.**

18 (a) *GOOD FAITH; REASONABLE EFFORTS.—In any*
19 *Y2K action except an action for breach or repudiation of*
20 *contract, the party against whom the claim is asserted shall*
21 *be entitled to establish, as a complete defense to any claim*
22 *for damages, that it acted in good faith and took measures*
23 *that were reasonable under the circumstances to prevent the*
24 *Y2K failure from occurring or from causing the damages*
25 *upon which the claim is based.*

1 (b) *DEFENDANT'S STATE OF MIND.*—In a Y2K action
2 making a claim for money damages in which the defend-
3 ant's actual or constructive awareness of an actual or po-
4 tential Y2K failure is an element of the claim, the defendant
5 is not liable unless the plaintiff, in addition to establishing
6 all other requisite elements of the claim, proves by clear and
7 convincing evidence that the defendant knew, or recklessly
8 disregarded a known and substantial risk, that the failure
9 would occur in the specific facts and circumstances of the
10 claim.

11 (c) *FORESEEABILITY.*—In a Y2K action making a
12 claim for money damages, the defendant is not liable unless
13 the plaintiff proves by clear and convincing evidence, in
14 addition to all other requisite elements of the claim, that
15 the defendant knew, or should have known, that the defend-
16 ant's action or failure to act would cause harm to the plain-
17 tiff in the specific facts and circumstances of the claim.

18 (d) *CONTROL NOT DETERMINATIVE OF LIABILITY.*—
19 The fact that a Y2K failure occurred in an entity, facility,
20 system, product, or component that was within the control
21 of the party against whom a claim for money damages is
22 asserted in a Y2K action shall not constitute the sole basis
23 for recovery of damages in that action.

24 (e) *PRESERVATION OF EXISTING LAW.*—The provi-
25 sions of this section are in addition to, and not in lieu of,

1 *any requirement under applicable law as to burdens of*
 2 *proof and elements necessary for prevailing in a claim for*
 3 *money damages.*

4 **SEC. 303. LIABILITY OF OFFICERS AND DIRECTORS.**

5 (a) *IN GENERAL.*—*A director, officer, trustee, or em-*
 6 *ployee of a business or other organization (including a cor-*
 7 *poration, unincorporated association, partnership, or non-*
 8 *profit organization) shall not be personally liable in any*
 9 *Y2K action making a tort or other noncontract claim in*
 10 *that person's capacity as a director, officer, trustee, or em-*
 11 *ployee of the business or organization for more than the*
 12 *greater of—*

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

14 (2) *the amount of pre-tax compensation received*
 15 *by the director, officer, trustee, or employee from the*
 16 *business or organization during the 12 months imme-*
 17 *diately preceding the act or omission for which liabil-*
 18 *ity was imposed.*

19 (b) *EXCEPTION.*—*Subsection (a) does not apply in any*
 20 *Y2K action in which it is found by clear and convincing*
 21 *evidence that the director, officer, trustee, or employee—*

22 (1) *intentionally made misleading statements re-*
 23 *garding any actual or potential year 2000 problem;*
 24 *or*

1 (2) *intentionally withheld from the public sig-*
 2 *nificant information there was a legal duty to disclose*
 3 *to the public regarding any actual or potential year*
 4 *2000 problem of that business or organization which*
 5 *would likely result in actionable Y2K failure.*

6 (c) *STATE LAW, CHARTER, OR BYLAWS.—Nothing in*
 7 *this section supersedes any provision of State law, charter,*
 8 *or a bylaw authorized by State law, in existence on Janu-*
 9 *ary 1, 1999, that establishes lower limits on the liability*
 10 *of a director, officer, trustee, or employee of such a business*
 11 *or organization.*

12 **TITLE IV—Y2K CLASS ACTIONS**

13 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

14 *In any Y2K action involving a claim that a product*
 15 *or service is defective, the action may be maintained as a*
 16 *class action in Federal or State court as to that claim only*
 17 *if—*

18 (1) *it satisfies all other prerequisites established*
 19 *by applicable Federal or State law or applicable rules*
 20 *of civil procedure; and*

21 (2) *the court finds that the alleged defect in a*
 22 *product or service is material as to the majority of*
 23 *the members of the class.*

1 **SEC. 402. NOTIFICATION.**

2 (a) *NOTICE BY MAIL.*—*In any Y2K action that is*
3 *maintained as a class action, the court, in addition to any*
4 *other notice required by applicable Federal or State law,*
5 *shall direct notice of the action to each member of the class*
6 *by United States mail, return receipt requested. Persons*
7 *whose receipt of the notice is not verified by the court or*
8 *by counsel for one of the parties shall be excluded from the*
9 *class unless those persons inform the court in writing, on*
10 *a date no later than the commencement of trial or entry*
11 *of judgment, that they wish to join the class.*

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

15 (1) *concisely and clearly describe the nature of*
16 *the action;*

17 (2) *identify the jurisdiction where the case is*
18 *pending; and*

19 (3) *describe the fee arrangement of class counsel.*

20 **SEC. 403. FORUM FOR Y2K CLASS ACTIONS.**

21 (a) *JURISDICTION.*—*The District Courts of the United*
22 *States have original jurisdiction of any Y2K action, with-*
23 *out regard to the sum or value of the matter in controversy*
24 *involved, that is brought as a class action if—*

1 (1) *any member of the proposed plaintiff class is*
2 *a citizen of a State different from the State of which*
3 *any defendant is a citizen;*

4 (2) *any member of the proposed plaintiff class is*
5 *a foreign Nation or a citizen of a foreign Nation and*
6 *any defendant is a citizen or lawful permanent resi-*
7 *dent of the United States; or*

8 (3) *any member of the proposed plaintiff class is*
9 *a citizen or lawful permanent resident of the United*
10 *States and any defendant is a citizen or lawful per-*
11 *manent resident of a foreign Nation.*

12 (b) *PREDOMINANT STATE INTEREST.—A United*
13 *States District Court in an action described in subsection*
14 (i) *may abstain from hearing the action if—*

15 (1) *a substantial majority of the members of all*
16 *proposed plaintiff classes are citizens of a single*
17 *State;*

18 (2) *the primary defendants are citizens of that*
19 *State; and*

20 (3) *the claims asserted will be governed pri-*
21 *marily by the laws of that State.*

22 (c) *LIMITED CONTROVERSIES.—A United States Dis-*
23 *trict Court in an action described in subsection (a) may*
24 *abstain from hearing the action if—*

1 (1) *the value of all matters in controversy as-*
2 *serted by the individual members of all proposed*
3 *plaintiff classes in the aggregate does not exceed*
4 *\$1,000,000, exclusive of interest and costs;*

5 (2) *the number of members of all proposed plain-*
6 *tiff classes in the aggregate in less than 100; or*

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

10 (d) *DIVERSITY DETERMINATION.—For purposes of ap-*
11 *plying section 1322(b) of title 28, United States Code, to*
12 *actions described in subsection (a) of this section, a member*
13 *of a proposed class is deemed to be a citizen of a State dif-*
14 *ferent from a corporation that is a defendant if that mem-*
15 *ber is a citizen of a State different from each State of which*
16 *that corporation is deemed a citizen.*

17 (e) *REMOVAL.—*

18 (1) *IN GENERAL.—A class action described in*
19 *subsection (a) may be removed to a district court of*
20 *the United States in accordance with chapter 89 of*
21 *title 28, United States Code, except that the action*
22 *may be removed—*

23 (A) *by any defendant without the consent of*
24 *all defendants; or*

1 (B) any plaintiff class member who is not
2 a named or representative class member of the
3 action for which removal is sought, without the
4 consent of all members of the class.

5 (2) *TIMING.*—This subsection applies to any
6 class before or after the entry of any order certifying
7 a class.

8 (3) *PROCEDURE.*—

9 (A) *IN GENERAL.*—Section 1446(a) of title
10 28, United States Code, shall be applied to a
11 plaintiff removing a case under this section by
12 treating the 30-day filing period as met if a
13 plaintiff class member who is not a named or
14 representative class member of the action for
15 which removal is sought files notice of removal
16 within 30 days after receipt by such class mem-
17 ber of the initial written notice of the class ac-
18 tion provided at the trial court’s direction.

19 (B) *APPLICATION OF SECTION 1446.*—Sec-
20 tion 1446 of title 28, United States Code, shall
21 be applied—

22 (i) to the removal of a case by a plain-
23 tiff under this section by substituting the
24 term “plaintiff” for the term “defendant”
25 each place it appears; and

1 (ii) to the removal of a case by a
2 plaintiff or a defendant under this
3 section—

4 (I) by inserting the phrase “by ex-
5 ercising due diligence” after
6 “ascertained” in the second paragraph
7 of subsection (b); and

8 (II) by treating the reference to
9 “jurisdiction conferred by section 1332
10 of this title” as a reference to sub-
11 section (a) of this section.

12 (f) *APPLICATION OF SUBSTANTIVE STATE LAW.*—

13 *Nothing in this section alters the substantive law applicable*
14 *to an action described in subsection (a).*

15 (g) *PROCEDURE AFTER REMOVAL.*—*If, after removal,*

16 *the court determines that no aspect of an action that is sub-*
17 *ject to its jurisdiction solely under the provisions of section*

18 *1332(b) of title 28, United States Code, may be maintained*

19 *as a class action under Rule 23 of the Federal Rules of*

20 *Civil Procedure, the court shall strike the class allegations*

21 *from the action and remand the action to the State court.*

22 *Upon remand of the action, the period of limitations for*

23 *any claim that was asserted in the action on behalf of any*

24 *named or unnamed member of any proposed class shall be*

25 *deemed tolled to the full extent provided under Federal law.*