

Public Law 105-270  
105th Congress

An Act

Oct. 19, 1998  
[S. 314]

To provide a process for identifying the functions of the Federal Government that are not inherently governmental functions, and for other purposes.

Federal Activities  
Inventory Reform  
Act of 1998.  
31 USC 501 note.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Federal Activities Inventory Reform Act of 1998”.

Records.

**SEC. 2. ANNUAL LISTS OF GOVERNMENT ACTIVITIES NOT INHERENTLY GOVERNMENTAL IN NATURE.**

Deadline.

(a) **LISTS REQUIRED.**—Not later than the end of the third quarter of each fiscal year, the head of each executive agency shall submit to the Director of the Office of Management and Budget a list of activities performed by Federal Government sources for the executive agency that, in the judgment of the head of the executive agency, are not inherently governmental functions. The entry for an activity on the list shall include the following:

(1) The fiscal year for which the activity first appeared on a list prepared under this section.

(2) The number of full-time employees (or its equivalent) that are necessary for the performance of the activity by a Federal Government source.

(3) The name of a Federal Government employee responsible for the activity from whom additional information about the activity may be obtained.

(b) **OMB REVIEW AND CONSULTATION.**—The Director of the Office of Management and Budget shall review the executive agency’s list for a fiscal year and consult with the head of the executive agency regarding the content of the final list for that fiscal year.

(c) **PUBLIC AVAILABILITY OF LISTS.**—

(1) **PUBLICATION.**—Upon the completion of the review and consultation regarding a list of an executive agency—

(A) the head of the executive agency shall promptly transmit a copy of the list to Congress and make the list available to the public; and

(B) the Director of the Office of Management and Budget shall promptly publish in the Federal Register a notice that the list is available to the public.

(2) **CHANGES.**—If the list changes after the publication of the notice as a result of the resolution of a challenge under section 3, the head of the executive agency shall promptly—

(A) make each such change available to the public and transmit a copy of the change to Congress; and

Federal Register,  
publication.

(B) publish in the Federal Register a notice that the change is available to the public.

Federal Register,  
publication.

(d) **COMPETITION REQUIRED.**—Within a reasonable time after the date on which a notice of the public availability of a list is published under subsection (c), the head of the executive agency concerned shall review the activities on the list. Each time that the head of the executive agency considers contracting with a private sector source for the performance of such an activity, the head of the executive agency shall use a competitive process to select the source (except as may otherwise be provided in a law other than this Act, an Executive order, regulations, or any executive branch circular setting forth requirements or guidance that is issued by competent executive authority). The Director of the Office of Management and Budget shall issue guidance for the administration of this subsection.

(e) **REALISTIC AND FAIR COST COMPARISONS.**—For the purpose of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the list on the basis of a comparison of the costs of procuring services from such a source with the costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are considered and that the costs considered are realistic and fair.

### SEC. 3. CHALLENGES TO THE LIST.

(a) **CHALLENGE AUTHORIZED.**—An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or an inclusion of a particular activity on, a list for which a notice of public availability has been published under section 2.

(b) **INTERESTED PARTY DEFINED.**—For the purposes of this section, the term “interested party”, with respect to an activity referred to in subsection (a), means the following:

(1) A private sector source that—

(A) is an actual or prospective offeror for any contract, or other form of agreement, to perform the activity; and

(B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

(2) A representative of any business or professional association that includes within its membership private sector sources referred to in paragraph (1).

(3) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

(4) The head of any labor organization referred to in section 7103(a)(4) of title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (3).

(c) **TIME FOR SUBMISSION.**—A challenge to a list shall be submitted to the executive agency concerned within 30 days after the publication of the notice of the public availability of the list under section 2.

## Deadline.

(d) INITIAL DECISION.—Within 28 days after an executive agency receives a challenge, an official designated by the head of the executive agency shall—

(1) decide the challenge; and

(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party's right to appeal under subsection (e).

(e) APPEAL.—

## Deadlines.

(1) AUTHORIZATION OF APPEAL.—An interested party may appeal an adverse decision of the official to the head of the executive agency within 10 days after receiving a notification of the decision under subsection (d).

(2) DECISION ON APPEAL.—Within 10 days after the head of an executive agency receives an appeal of a decision under paragraph (1), the head of the executive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.

## SEC. 4. APPLICABILITY.

(a) EXECUTIVE AGENCIES COVERED.—Except as provided in subsection (b), this Act applies to the following executive agencies:

(1) EXECUTIVE DEPARTMENT.—An executive department named in section 101 of title 5, United States Code.

(2) MILITARY DEPARTMENT.—A military department named in section 102 of title 5, United States Code.

(3) INDEPENDENT ESTABLISHMENT.—An independent establishment, as defined in section 104 of title 5, United States Code.

(b) EXCEPTIONS.—This Act does not apply to or with respect to the following:

(1) GENERAL ACCOUNTING OFFICE.—The General Accounting Office.

(2) GOVERNMENT CORPORATION.—A Government corporation or a Government controlled corporation, as those terms are defined in section 103 of title 5, United States Code.

(3) NONAPPROPRIATED FUNDS INSTRUMENTALITY.—A part of a department or agency if all of the employees of that part of the department or agency are employees referred to in section 2105(c) of title 5, United States Code.

(4) CERTAIN DEPOT-LEVEL MAINTENANCE AND REPAIR.—Depot-level maintenance and repair of the Department of Defense (as defined in section 2460 of title 10, United States Code).

## SEC. 5. DEFINITIONS.

In this Act:

(1) FEDERAL GOVERNMENT SOURCE.—The term "Federal Government source", with respect to performance of an activity, means any organization within an executive agency that uses Federal Government employees to perform the activity.

(2) INHERENTLY GOVERNMENTAL FUNCTION.—

(A) DEFINITION.—The term "inherently governmental function" means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(B) **FUNCTIONS INCLUDED.**—The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as—

(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States; or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

(C) **FUNCTIONS EXCLUDED.**—The term does not normally include—

(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

#### **SEC. 6. EFFECTIVE DATE.**

This Act shall take effect on October 1, 1998.

Approved October 19, 1998.

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#### **LEGISLATIVE HISTORY—S. 314:**

SENATE REPORTS: No. 105-269 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 144 (1998):

July 30, considered and passed Senate.

Oct. 5, considered and passed House.

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(1) decide the challenge; and

(2) transmit to the party submitting the challenge a written notification of the decision together with a discussion of the rationale for the decision and an explanation of the party's right to appeal under subsection (e).

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(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States; or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

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July 30, considered and passed Senate.

Oct. 5, considered and passed House.

Public Law 105-271  
105th Congress

An Act

Oct. 19, 1998  
[S. 2392]

To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

Year 2000  
Information and  
Readiness  
Disclosure Act.  
15 USC 1 note.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Year 2000 Information and Readiness Disclosure Act".

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

(a) FINDINGS.—Congress finds the following:

(1)(A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation's economic well-being and security.

(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.



(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

(b) **PURPOSES.**—Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are—

(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

### SEC. 3. DEFINITIONS.

In this Act:

(1) **ANTITRUST LAWS.**—The term “antitrust laws”—

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

(2) **CONSUMER.**—The term “consumer” means an individual who acquires a consumer product for purposes other than resale.

(3) **CONSUMER PRODUCT.**—The term “consumer product” means any personal property or service which is normally used for personal, family, or household purposes.

(4) **COVERED ACTION.**—The term “covered action” means a civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) **MAKER.**—The term “maker” means each person or entity, including the United States or a State or political subdivision thereof, that—

(A) issues or publishes any year 2000 statement;

(B) develops or prepares any year 2000 statement;

or

(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

(6) **REPUBLICATION.**—The term “republication” means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) **YEAR 2000 INTERNET WEBSITE.**—The term “year 2000 Internet website” means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year



2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) **YEAR 2000 PROCESSING.**—The term “year 2000 processing” means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) **YEAR 2000 READINESS DISCLOSURE.**—The term “year 2000 readiness disclosure” means any written year 2000 statement—

(A) clearly identified on its face as a year 2000 readiness disclosure;

(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

(10) **YEAR 2000 REMEDIATION PRODUCT OR SERVICE.**—The term “year 2000 remediation product or service” means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

(11) **YEAR 2000 STATEMENT.**—

(A) **IN GENERAL.**—The term “year 2000 statement” means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or set of products and services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) **NOT INCLUDED.**—For the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term “year 2000 statement” does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C.

781(i)), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

#### SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) **EVIDENCE EXCLUSION.**—No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker's use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

(b) **FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS.**—Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

(1) the year 2000 statement was material; and

(2)(A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication, that the maker of the republication made the year 2000 statement—

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that—

(I) the maker has not verified the contents of the republication; or

(II) the maker is not the source of the republication and the republication is based on information supplied by another person or entity identified in that year 2000 statement or republication.

(c) **DEFAMATION OR SIMILAR CLAIMS.**—In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement

was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE.—

(1) IN GENERAL.—Except as provided in paragraph (2), in any covered action other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed an adequate mechanism for providing that notice.

(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the use of the mechanism of notice—

(A) is contrary to express prior representations regarding the mechanism of notice made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice, no regular course of dealing exists between the parties, and actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION.—Nothing in this subsection shall—

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS.—

(1) IN GENERAL.—In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE.—

(A) IN GENERAL.—This subsection shall not apply—

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect applicable Federal or State law in effect as of the date of enactment of this Act with respect to determining the extent to which a year 2000 statement affects a contract or warranty.

(f) SPECIAL DATA GATHERING.—

(1) **IN GENERAL.**—A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

(2) **SPECIFICS.**—A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority, or, with its consent, another public or private entity, agency, or authority, to gather responses to the request.

(3) **PROTECTIONS.**—Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such information provided by a party in response to a special year 2000 data gathering request made under this subsection—

(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the “Freedom of Information Act”;

(B) shall not be disclosed to any third party; and

(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

(4) **EXCEPTIONS.**—

(A) **INFORMATION OBTAINED ELSEWHERE.**—Nothing in this subsection shall preclude a Federal entity, agency, or authority, or any third party, from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) **VOLUNTARY DISCLOSURE.**—A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to a special year 2000 data gathering request or disclosed by such party separately from a response to a special year 2000 data gathering request.

#### **SEC. 5. TEMPORARY ANTITRUST EXEMPTION.**

(a) **EXEMPTION.**—Except as provided in subsection (b), the anti-trust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to—

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure

(b) **APPLICABILITY.**—Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) **EXCEPTION TO EXEMPTION.**—Subsection (a) shall not apply with respect to conduct that involves or results in an agreement

to boycott any person, to allocate a market, or to fix prices or output.

(d) **RULE OF CONSTRUCTION.**—The exemption granted by this section shall be construed narrowly.

**SEC. 6. EXCLUSIONS.**

(a) **EFFECT ON INFORMATION DISCLOSURE.**—This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) **CONTRACTS AND OTHER CLAIMS.**—

(1) **IN GENERAL.**—Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person or entity, under any Federal or State law.

(2) **OTHER CLAIMS.**—

(A) **IN GENERAL.**—In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(B) **SPECIFIC NOTICE REQUIRED.**—In any covered action, this Act shall not apply to a year 2000 statement, concerning a year 2000 remediation product or service, expressly made in an offer to sell or in a solicitation (including an advertisement) by a seller, manufacturer, or provider, of that product or service unless, during the course of the offer or solicitation, the party making the offer or solicitation provides the following notice in accordance with section 4(d):

“Statements made to you in the course of this sale are subject to the Year 2000 Information and Readiness Disclosure Act (\_\_\_ U.S.C. \_\_\_). In the case of a dispute, this Act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff.”

(3) **RULE OF CONSTRUCTION.**—Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) **DUTY OR STANDARD OF CARE.**—

(1) **IN GENERAL.**—This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) **ADDITIONAL DISCLOSURE.**—This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

(3) **DUTY OF CARE.**—This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) **INTELLECTUAL PROPERTY RIGHTS.**—This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

(e) **INJUNCTIVE RELIEF.**—Nothing in this Act shall be deemed to preclude a claimant from seeking injunctive relief with respect to a year 2000 statement.

#### SEC. 7. APPLICABILITY.

(a) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act.

(2) **APPLICATION TO LAWSUITS PENDING.**—This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

(3) **APPLICATION TO STATEMENTS AND DISCLOSURES.**—Except as provided in subsection (b)—

(A) this Act shall apply to any year 2000 statement made beginning on July 14, 1998 and ending on July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness disclosure made beginning on the date of enactment of this Act and ending on July 14, 2001.

(b) **PREVIOUSLY MADE READINESS DISCLOSURE.**—

(1) **IN GENERAL.**—For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act, may designate that year 2000 statement as a year 2000 readiness disclosure if—

(A) the year 2000 statement complied with the requirements of section 3(9) when made, other than being clearly designated on its face as a disclosure; and

(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation— Deadline.

(i) provides individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; or

(ii) prominently posts notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also uses the same method of notification used to originally provide the applicable year 2000 statement.

(2) **REQUIREMENTS.**—A notice under paragraph (1)(B) shall—

(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend labeling the statement as a “Year 2000 Readiness Disclosure”.

(c) **EXCEPTION.**—No designation of a year 2000 statement as a year 2000 readiness disclosure under subsection (b) shall apply with respect to any person or entity that—

(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice