

106TH CONGRESS  
1ST SESSION

# S. 723

To provide regulatory amnesty for defendants who are unable to comply with federally enforceable requirements because of factors related to a Y2K system failure.

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## IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To provide regulatory amnesty for defendants who are unable to comply with federally enforceable requirements because of factors related to a Y2K system failure.

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 “Y2K Regulatory Am-  
5       nesty Act of 1999”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) Y2K FAILURE.—The term “Y2K failure”  
9       means any failure by any device or system (including

1 any computer system and any microchip or inte-  
2 grated circuit embedded in another device or prod-  
3 uct), or any software, firmware, or other set or col-  
4 lection of processing instructions, however con-  
5 structed, in processing, calculating, comparing, se-  
6 quencing, displaying, storing, transmitting, or receiv-  
7 ing date-related data, including—

8 (A) the failure to accurately administer or  
9 account for transitions or comparisons from,  
10 into, and between the 20th and 21st centuries,  
11 and between 1999 and 2000; or

12 (B) the failure to recognize or accurately  
13 process any specific date, and the failure accu-  
14 rately to account for the status of the year  
15 2000 as a leap year.

16 (2) Y2K UPSET.—The term “Y2K upset”—

17 (A) means an exceptional incident involv-  
18 ing temporary noncompliance with applicable  
19 federally enforceable requirements because of  
20 factors related to a Y2K failure that are beyond  
21 the reasonable control of the defendant charged  
22 with compliance; and

23 (B) does not include—

24 (i) noncompliance with applicable fed-  
25 erally enforceable requirements that con-

1                   stitutes or would create an imminent  
2                   threat to public health or safety;

3                   (ii) noncompliance to the extent  
4                   caused by operational error or negligence;

5                   (iii) lack of reasonable preventative  
6                   maintenance; or

7                   (iv) lack of preparedness for Y2K.

8   **SEC. 3. CONDITIONS NECESSARY FOR A DEMONSTRATION**  
9                   **OF A Y2K UPSET.**

10       A defendant who wishes to establish the affirmative  
11   defense of Y2K upset shall demonstrate, through properly  
12   signed, contemporaneous operating logs, or other relevant  
13   evidence that—

14               (1) the defendant previously made a good faith  
15   effort to effectively remediate Y2K problems;

16               (2) a Y2K upset occurred as a result of a Y2K  
17   system failure or other Y2K emergency;

18               (3) noncompliance with the applicable federally  
19   enforceable requirement was unavoidable in the face  
20   of a Y2K emergency or was intended to prevent the  
21   disruption of critical functions or services that could  
22   result in the harm of life or property;

23               (4) upon identification of noncompliance the de-  
24   fendant invoking the defense began immediate ac-

1        tions to remediate any violation of federally enforce-  
2        able requirements; and

3            (5) the defendant submitted notice to the ap-  
4        propriate Federal regulatory authority of a Y2K  
5        upset within 72 hours from the time that it became  
6        aware of the upset.

7        **SEC. 4. GRANT OF A Y2K UPSET.**

8        Subject to the other provisions of this Act, the Y2K  
9        upset defense shall be a complete defense to any action  
10       brought as a result of noncompliance with federally en-  
11       forceable requirements for any defendant who establishes  
12       by a preponderance of the evidence that the conditions set  
13       forth in section 3 are met.

14       **SEC. 5. LENGTH OF Y2K UPSET.**

15       The maximum allowable length of the Y2K upset  
16       shall be not more than 30 days beginning on the date of  
17       the upset unless granted specific relief by the appropriate  
18       regulatory authority.

19       **SEC. 6. VIOLATION OF A Y2K UPSET.**

20       Fraudulent use of the Y2K upset defense provided  
21       for in this Act shall be subject to penalties provided in  
22       section 1001 of title 18, United States Code.

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