

Calendar No. 113

106TH CONGRESS
1ST Session

H. R. 775

AN ACT

To establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes.

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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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Year 2000 Readiness
3 and Responsibility Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

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

13 (2) It is appropriate for the Congress to enact
14 legislation to assure that year 2000 problems do not
15 unnecessarily disrupt interstate commerce or create
16 unnecessary case loads in Federal and State courts
17 and to provide initiatives to help businesses prepare
18 and be in a position to withstand the potentially dev-
19 astating economic impact of the year 2000 problem.

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

23 (4) Resorting to the legal system for resolution
24 of year 2000 problems is not feasible for many busi-
25 nesses, particularly small businesses, because of its
26 complexity and expense.

1 (5) The delays, expense, uncertainties, loss of
2 control, adverse publicity and animosities that fre-
3 quently accompany litigation of business disputes
4 can only exacerbate the difficulties associated with
5 the year 2000 date change, and work against the
6 successful resolution of those difficulties.

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

15 (7) A proliferation of frivolous year 2000 ac-
16 tions by opportunistic parties may further limit ac-
17 cess to courts by straining the resources of the legal
18 system and depriving deserving parties of their le-
19 gitimate rights to relief.

20 (8) The Congress encourages businesses to ap-
21 proach their year 2000 disputes responsibly, and to
22 avoid unnecessary, time-consuming and costly litiga-
23 tion based on year 2000 failures. Congress supports
24 good faith negotiations between parties when there
25 is a dispute over a year 2000 problem, and, if nec-

1 essary, urges the parties to enter into voluntary,
2 non-binding mediation rather than litigation.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) CONTRACT.—The term “contract” means a
6 contract, tariff, license, or warranty.

7 (2) DAMAGES.—The term “damages” means
8 punitive, compensatory, and restitutionary relief.

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; and

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 special
23 damages, and consequential damages (as
24 defined in the Uniform Commercial Code or
25 analogous State commercial law).

1 (5) GOVERNMENTAL ENTITY.—The term “gov-
2 ernmental entity” means an agency, instrumentality,
3 other entity, or official of Federal, State, or local
4 government (including multijurisdictional agencies,
5 instrumentalities, and entities).

6 (6) MATERIAL DEFECT.—The term “material
7 defect” means a defect in any item, whether tangible
8 or intangible, or in the provision of a service, that
9 substantially prevents the item or service from oper-
10 ating or functioning as designed or intended. The
11 term “material defect” does not include a defect
12 that has an insignificant or de minimis effect on the
13 operation or functioning of an item, that affects only
14 a component of an item that, as a whole, substan-
15 tially operates or functions as designed, or that has
16 an insignificant or de minimis effect on the efficacy
17 of the service provided.

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

23 (8) PERSONAL INJURY.—The term “personal
24 injury” means any physical injury to a natural per-
25 son, including death of the person, and mental suf-

1 fering, emotional distress, or like elements of injury
2 suffered by a natural person in connection with a
3 physical injury.

4 (9) PLAINTIFF.—The term “plaintiff” means
5 any person who asserts a year 2000 claim.

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

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

18 (12) YEAR 2000 ACTION.—The term “year 2000
19 action” means any civil action of any kind brought
20 in any court under Federal or State law, or an agen-
21 cy board of contract appeal proceeding, in which a
22 year 2000 claim is asserted.

23 (13) YEAR 2000 CLAIM.—The term “year 2000
24 claim”—

1 (A) means any claim or cause of action of
2 any kind, other than a claim based on personal
3 injury, whether asserted by way of claim, coun-
4 terclaim, cross-claim, third-party claim, defense,
5 or otherwise, in which the plaintiff's alleged loss
6 or harm resulted, directly or indirectly, from a
7 year 2000 failure;

8 (B) includes a claim brought in any Fed-
9 eral or State court by a governmental entity
10 when acting in a commercial or contracting ca-
11 pacity; and

12 (C) does not include a claim brought by
13 such a governmental entity acting in a regu-
14 latory, supervisory, or enforcement capacity.

15 (14) YEAR 2000 FAILURE.—The term “year
16 2000 failure” means any failure by any device or
17 system (including, without limitation, any computer
18 system and any microchip or integrated circuit em-
19 bedded in another device or product), or any soft-
20 ware, firmware, or other set or collection of proc-
21 essing instructions, however constructed, in proc-
22 essing, calculating, comparing, sequencing, dis-
23 playing, storing, transmitting, or receiving year
24 2000 date-related data.

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

2 (a) GENERAL RULE.—This Act applies to any year
3 2000 claim brought after January 1, 1999, including any
4 appeal, remand, stay, or other judicial, administrative, or
5 alternative dispute resolution proceeding with respect to
6 such claim.

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

12 (c) EXCLUSION OF PERSONAL INJURY CLAIMS.—
13 None of the provisions of this Act shall apply to any claim
14 based on personal injury, including any claim asserted by
15 way of claim, counterclaim, cross-claim, third-party claim,
16 or otherwise, that arises out of an underlying action for
17 personal injury.

18 (d) PREEMPTION OF STATE LAW.—Except as other-
19 wise provided in this Act, this Act supersedes State law
20 to the extent that it establishes a rule of law applicable
21 to a year 2000 claim that is inconsistent with State law.

22 (e) CERTAIN OTHER ACTIONS.—A person who is lia-
23 ble for damages, whether by settlement or judgment, in
24 a claim or civil action to which this Act does not apply
25 by reason of subsection (c) and whose liability, in whole
26 or in part, is the result of a year 2000 failure may pursue

1 any remedy otherwise available under Federal or State law
2 against the person responsible for that year 2000 failure
3 to the extent of recovering the amount of those damages.
4 Any such remedy shall not be subject to this Act.

5 **TITLE I—UNIFORM PRE-**
6 **LITIGATION PROCEDURES**
7 **FOR YEAR 2000 ACTIONS**

8 **SEC. 101. NOTICE PROCEDURES TO AVOID UNNECESSARY**
9 **YEAR 2000 ACTIONS.**

10 (a) NOTIFICATION PERIOD.—Before filing a year
11 2000 action, except an action that seeks only injunctive
12 relief, a prospective plaintiff shall send by certified mail
13 to each prospective defendant a written notice that identi-
14 fies, with particularity as to any year 2000 claim—

15 (1) any symptoms of any material defect alleged
16 to have caused harm or loss;

17 (2) the harm or loss allegedly suffered by the
18 prospective plaintiff;

19 (3) the facts that lead the prospective plaintiff
20 to hold such person responsible for both the defect
21 and the injury;

22 (4) the relief or action sought by the prospec-
23 tive plaintiff; and

24 (5) the name, title, address, and telephone
25 numbers of any individual who has authority to ne-

1 gotiate a resolution of the dispute on behalf of the
2 prospective plaintiff.

3 The notice under this subsection does not require descrip-
4 tions of technical specifications or other technical details
5 with respect to the material defect at issue. Except as pro-
6 vided in subsection (c), the prospective plaintiff shall not
7 commence an action in Federal or State court until the
8 expiration of 90 days after the date on which such notice
9 is received. Such 90-day period shall be excluded in the
10 computation of any applicable statute of limitations.

11 (b) RESPONSE TO NOTICE.—

12 (1) IN GENERAL.—Not later than 30 days after
13 receipt of the notice specified in subsection (a), each
14 prospective defendant shall send by certified mail
15 with return receipt requested to each prospective
16 plaintiff a written statement acknowledging receipt
17 of the notice and describing any actions it has taken
18 or will take by not later than 60 days after the end
19 of that 30-day period, to remedy the problem identi-
20 fied by the prospective plaintiff.

21 (2) INADMISSIBILITY.—A written statement re-
22 quired by this subsection is not admissible in evi-
23 dence, under Rule 408 of the Federal Rules of Evi-
24 dence or any analogous rule of evidence in any
25 State, in any proceeding to prove liability for, or the

1 invalidity of, a claim or its amount, or otherwise as
2 evidence of conduct or statements made in com-
3 promise negotiations.

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

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 has taken or will take to remedy the
13 problem identified by the prospective plaintiff within the
14 subsequent 60 days, the 90-day period specified in sub-
15 section (a) shall terminate at the end of that 30-day period
16 as to that prospective defendant and the prospective plain-
17 tiff may thereafter commence its action against that pro-
18 spective defendant.

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

1 plaint. If any defendant elects to treat the complaint as
2 such a notice—

3 (1) the court shall stay all discovery in the ac-
4 tion involving that defendant for the applicable time
5 period provided in subsection (a) or (c), as the case
6 may be, after filing of the complaint; and

7 (2) the time for filing answers and all other
8 pleadings shall be tolled during such applicable pe-
9 riod.

10 (e) EFFECT OF CONTRACTUAL WAITING PERIODS.—

11 In cases in which a contract or a statute enacted before
12 January 1, 1999, requires notice of nonperformance and
13 provides for a period of delay prior to the initiation of suit
14 for breach or repudiation of contract, the period of delay
15 provided in the contract or the statute is controlling over
16 the waiting period specified in subsections (a) and (d).

17 (f) SANCTION FOR FRIVOLOUS INVOCATION OF THE

18 STAY PROVISION.—In any action in which a defendant
19 acts pursuant to subsection (d) to stay the action, and
20 the court subsequently finds that the defendant’s assertion
21 that the suit is a year 2000 action was frivolous and made
22 for the purpose of causing unnecessary delay, the court
23 may award sanctions to opposing parties in accordance
24 with the provisions of Rule 11 of the Federal Rules of
25 Civil Procedure or the equivalent applicable State rule.

1 (g) COMPUTATION OF TIME.—For purposes of this
2 section, the rules regarding computation of time shall be
3 governed by the applicable Federal or State rules of civil
4 procedure.

5 (h) SPECIAL RULE FOR CLASS ACTIONS.—For the
6 purpose of applying this section to a year 2000 action that
7 is maintained as a class action in Federal or State court,
8 the requirements of the preceding subsections of this sec-
9 tion apply only to named plaintiffs in the class action.

10 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION TO AVOID**
11 **UNNECESSARY YEAR 2000 ACTIONS.**

12 (a) IN GENERAL.—(1) At any time during the 90-
13 day period specified in section 101(a), either party may
14 request the other to use alternative dispute resolution. If,
15 based upon that request, the parties enter into an agree-
16 ment to use alternative dispute resolution, they may also
17 agree to an extension of the 90-day period.

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

22 (b) PAYMENT OF MONEYS DUE.—If the parties re-
23 solve their dispute through alternative dispute resolution
24 as provided in subsection (a), the defendant shall pay all
25 moneys due within 30 days, unless another period of time

1 is agreed to by the parties or established by contract be-
2 tween the parties.

3 (c) FORECLOSURE OF FURTHER PROCEEDINGS ON
4 RESOLVED ISSUES.—Resolution of the issues by the par-
5 ties prior to litigation through negotiation or alternative
6 dispute resolution shall foreclose any further proceedings
7 with respect to those issues.

8 **SEC. 103. PLEADING REQUIREMENTS.**

9 (a) APPLICATION WITH RULES OF CIVIL PROCE-
10 DURE.—This section applies exclusively to year 2000
11 claims and, except to the extent that this section requires
12 additional information to be contained in or attached to
13 pleadings, nothing in this section is intended to amend or
14 otherwise supersede applicable rules of Federal or State
15 civil procedure.

16 (b) NATURE AND AMOUNT OF DAMAGES.—With re-
17 spect to any year 2000 claim that seeks the award of
18 money damages, the complaint shall state with particu-
19 larity the nature and amount of each element of damages,
20 and the factual basis for the damages calculation.

21 (c) MATERIAL DEFECTS.—With respect to any year
22 2000 claim in which the plaintiff alleges that a product
23 or service was defective, the complaint shall identify with
24 particularity the symptoms of the material defects and

1 shall state with particularity the facts supporting the con-
2 clusion that the defects are material.

3 (d) REQUIRED STATE OF MIND.—With respect to
4 any year 2000 claim as to which the plaintiff may prevail
5 only on proof that the defendant acted with a particular
6 state of mind, the complaint shall, with respect to each
7 element of the year 2000 claim, state with particularity
8 the facts giving rise to a strong inference that the defend-
9 ant acted with the required state of mind.

10 (e) MOTION TO DISMISS; STAY OF DISCOVERY.—

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

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

23 (3) PRESERVATION OF EVIDENCE.—

24 (A) IN GENERAL.—During the pendency of
25 any stay of discovery entered pursuant to this

1 subsection, unless otherwise ordered by the
2 court, any party to the action with actual notice
3 of the allegations contained in the complaint
4 shall treat all documents, data compilations (in-
5 cluding electronically stored or recorded data),
6 and tangible objects that are in the custody or
7 control of such person and that are relevant to
8 the allegations, as if they were a subject of a
9 continuing request for production of documents
10 from an opposing party under applicable Fed-
11 eral or State rules of civil procedure.

12 (B) SANCTION FOR WILLFUL VIOLA-
13 TION.—A party aggrieved by the willful failure
14 of an opposing party to comply with subpara-
15 graph (A) may apply to the court for an order
16 awarding appropriate sanctions.

17 **SEC. 104. DUTY OF ALL PERSONS TO MITIGATE YEAR 2000**

18 **COMPUTER FAILURES AND RESULTING DAM-**

19 **AGES.**

20 Damages awarded for any year 2000 claim shall ex-
21 clude compensation for damages the plaintiff could reason-
22 ably have avoided in light of any disclosure or other infor-
23 mation of which the plaintiff was, or reasonably should
24 have been, aware, including information made available by
25 the defendant to purchasers or users of the defendant's

1 product or services concerning means of remedying or
 2 avoiding the year 2000 failure.

3 **TITLE II—YEAR 2000 ACTIONS** 4 **INVOLVING CONTRACTS**

5 **SEC. 201. CERTAINTY OF CONTRACT TERMS FOR PREVEN-** 6 **TION OF YEAR 2000 DAMAGES.**

7 (a) IN GENERAL.—Subject to subsection (b), in re-
 8 solving any year 2000 claim, any written contractual term,
 9 including a limitation or an exclusion of liability, or a dis-
 10 claimer of warranty, shall be fully enforced unless the en-
 11 forcement of that term would manifestly and directly con-
 12 travene applicable State law embodied in any statute in
 13 effect on January 1, 1999, specifically addressing that
 14 term.

15 (b) INTERPRETATION OF CONTRACT.—In resolving
 16 any year 2000 claim as to which a contract to which sub-
 17 section (a) applies is silent with respect to a particular
 18 issue, the interpretation of the contract with respect to
 19 that issue shall be determined by applicable law in effect
 20 at the time the contract was executed.

21 **SEC. 202. APPLICATION OF EXISTING IMPOSSIBILITY OR** 22 **COMMERCIAL IMPRACTICABILITY DOC-** 23 **TRINES.**

24 (a) DOCTRINE OF IMPOSSIBILITY AND COMMERCIAL
 25 IMPRACTICABILITY.—With respect to any year 2000 claim

1 for breach or repudiation of contract, the applicability of
2 the doctrines of impossibility and commercial imprac-
3 ticability shall be determined by the law in existence on
4 January 1, 1999. Nothing in this Act shall be construed
5 as limiting or impairing a party's right to assert defenses
6 based upon such doctrines.

7 (b) REASONABLE EFFORTS.—To the extent that im-
8 possibility or commercial impracticability is raised as a de-
9 fense against a claim for breach or repudiation of contract,
10 the party asserting the defense shall be allowed to offer
11 evidence that its implementation of the contract, or its ef-
12 forts to implement the contract, were reasonable in light
13 of the circumstances.

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

16 With respect to any year 2000 claim involving a
17 breach of contract or a claim related to the contract, no
18 party may claim or be awarded any category of damages
19 unless such damages are allowed by the express terms of
20 the contract or, if the contract is silent on such damages,
21 by operation of the applicable Federal or State law that
22 governed interpretation of the contract at the time the
23 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.—A person against whom a final
6 judgment is entered with respect to a year 2000 claim,
7 other than a claim for breach or repudiation of contract,
8 shall be liable solely for the portion of the judgment that
9 corresponds to the percentage of responsibility of that per-
10 son, as determined under subsection (b).

11 (b) DETERMINATION OF RESPONSIBILITY.—

12 (1) IN GENERAL.—With respect to any year
13 2000 claim, the court shall instruct the jury to an-
14 swer special interrogatories, or if there is no jury,
15 shall make findings, with respect to each defendant
16 and plaintiff, and each of the other persons claimed
17 by any of the parties to have caused or contributed
18 to the loss incurred by the plaintiff, including (but
19 not limited to) persons who have entered into settle-
20 ments with the plaintiff or plaintiffs, concerning the
21 percentage of responsibility of the defendant, the
22 plaintiff, and each such person, measured as a per-
23 centage of the total fault of all persons who caused
24 or contributed to the total loss incurred by the plain-
25 tiff.

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. LIMITATION ON BYSTANDER LIABILITY FOR YEAR**
 23 **2000 FAILURES.**

24 (a) IN GENERAL.—With respect to any year 2000
 25 claim for money damages in which—

1 (1) the defendant is not the manufacturer, sell-
2 er, or distributor of a product, or the provider of a
3 service, that suffers or causes the year 2000 failure
4 at issue;

5 (2) the plaintiff is not in substantial privity
6 with the defendant; and

7 (3) the defendant's actual or constructive
8 awareness of an actual or potential year 2000 failure
9 is an element of the claim under applicable law,
10 the defendant shall not be liable unless the plaintiff, in
11 addition to establishing all other requisite elements of the
12 claim, proves by clear and convincing evidence that the
13 defendant actually knew, or recklessly disregarded a
14 known and substantial risk, that such failure would occur.

15 (b) SUBSTANTIAL PRIVACY.—For purposes of sub-
16 section (a)(2), a plaintiff and a defendant are in substan-
17 tial privity when, in a year 2000 claim arising out of the
18 performance of professional services, the plaintiff and the
19 defendant either have contractual relations with one an-
20 other or the plaintiff is a person who, prior to the defend-
21 ant's performance of such services, was specifically identi-
22 fied to and acknowledged by the defendant as a person
23 for whose special benefit the services were being per-
24 formed.

1 (c) CERTAIN CLAIMS EXCLUDED.—For purposes of
2 subsection (a)(3), claims in which the defendant’s actual
3 or constructive awareness of an actual or potential year
4 2000 failure is an element of the claim under applicable
5 law do not include claims for negligence but do include
6 claims such as fraud, constructive fraud, breach of fidu-
7 ciary duty, negligent misrepresentation, and interference
8 with contract or economic advantage.

9 **SEC. 303. REASONABLE EFFORTS DEFENSE.**

10 With respect to any year 2000 claim seeking money
11 damages, except with respect to claims asserting breach
12 or repudiation of contract—

13 (1) the fact that a year 2000 failure occurred
14 in an entity, facility, system, product, or component
15 that was sold by, leased by, rented by, or otherwise
16 within the control of the party against whom the
17 claim is asserted shall not constitute the sole basis
18 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) STANDARD FOR AWARDS.—With respect to any
3 year 2000 claim for which punitive damages may be
4 awarded under applicable law, the defendant shall not be
5 liable for punitive damages unless the plaintiff proves by
6 clear and convincing evidence that conduct carried out by
7 the defendant showed a conscious, flagrant indifference to
8 the rights or safety of others and was the proximate cause
9 of the harm or loss that is the subject of the year 2000
10 claim. This requirement is in addition to any other re-
11 quirement in applicable law for the award of such dam-
12 ages.

13 (b) CAPS ON PUNITIVE DAMAGES.—

14 (1) IN GENERAL.—With respect to any year
15 2000 claim, if a defendant is found liable for puni-
16 tive damages, the amount of punitive damages that
17 may be awarded to a plaintiff shall not exceed the
18 greater of—

19 (A) three times the amount awarded to the
20 plaintiff for compensatory damages; or

21 (B) \$250,000.

22 (2) SPECIAL RULE.—

23 (A) IN GENERAL.—Notwithstanding para-
24 graph (1), with respect to any year 2000 claim,
25 if the defendant is found liable for punitive
26 damages and the defendant—

1 (i) is an individual whose net worth
2 does not exceed \$500,000;

3 (ii) is an owner of an unincorporated
4 business that has fewer than 25 full-time
5 employees; or

6 (iii) is—

7 (I) a partnership;

8 (II) corporation;

9 (III) association;

10 (IV) unit of local government; or

11 (V) organization,

12 that has fewer than 25 full-time employees,
13 the amount of punitive damages shall not ex-
14 ceed the lesser of three times the amount
15 awarded to the plaintiff for compensatory dam-
16 ages, or \$250,000.

17 (B) APPLICABILITY.—For purposes of de-
18 termining the applicability of this paragraph to
19 a corporation, the number of employees of a
20 subsidiary of a wholly owned corporation shall
21 include all employees of a parent corporation or
22 any subsidiary of that parent corporation.

23 (3) APPLICATION OF LIMITATIONS BY THE
24 COURT.—The limitations contained in paragraphs

1 (1) and (2) shall be applied by the court and shall
2 not be disclosed to the jury.

3 **SEC. 305. RECOVERY OF ECONOMIC DAMAGES FOR YEAR**
4 **2000 CLAIMS.**

5 (a) LIMITATION ON RECOVERY OF ECONOMIC
6 LOSSES.—Subject to subsection (b), a plaintiff making a
7 year 2000 claim alleging a nonintentional tort may recover
8 economic losses only upon establishing, in addition to all
9 other elements of the claim under applicable law, that any
10 one of the following circumstances exists:

11 (1) The recovery of such losses is provided for
12 in a contract to which the plaintiff is a party.

13 (2) Such losses are incidental to a year 2000
14 claim based on damage to tangible personal or real
15 property caused by a year 2000 failure (other than
16 damage to property that is the subject of a contract
17 between the parties involved in the year 2000 claim).

18 (b) RECOVERY MUST BE PERMITTED UNDER APPLI-
19 CABLE LAW.—Economic losses shall be recoverable under
20 this section only if applicable Federal law, or applicable
21 State law embodied in statute or controlling judicial prece-
22 dent as of January 1, 1999, permits the recovery of such
23 losses.

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

2 (a) IN GENERAL.—A director, officer, or trustee of
 3 a business or other organization (including a corporation,
 4 unincorporated association, partnership, or nonprofit or-
 5 ganization) shall not be personally liable with respect to
 6 any year 2000 claim in his or her capacity as a director
 7 or officer of the business or organization for an aggregate
 8 amount that exceeds the greater of—

9 (1) \$100,000; or

10 (2) the amount of cash compensation received
 11 by the director or officer from the business or orga-
 12 nization during the 12-month period immediately
 13 preceding the act or omission for which liability was
 14 imposed.

15 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
 16 tion shall be deemed to impose, or to permit the imposition
 17 of, personal liability on any director, officer, or trustee in
 18 excess of the aggregate amount of liability to which such
 19 director, officer, or trustee would be subject under applica-
 20 ble State law in existence on January 1, 1999 (including
 21 any charter or bylaw authorized by such State law).

22 **TITLE IV—YEAR 2000 CLASS**
 23 **ACTIONS**

24 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

25 (a) IN GENERAL.—In any year 2000 action involving
 26 a year 2000 claim that a product or service is defective,

1 the action may be maintained as a class action in Federal
2 or State court as to that claim only if it satisfies all other
3 prerequisites established by applicable Federal or State
4 law and the court also finds that the alleged defect in the
5 product or service was a material defect as to a majority
6 of the members of the class.

7 (b) DETERMINATION BY COURT.—As soon as prac-
8 ticable after the commencement of a year 2000 action in-
9 volving a year 2000 claim that a product or service is de-
10 fective and that is brought as a class action, the court
11 shall determine by order whether the requirement set forth
12 in subsection (a) is satisfied. An order under this sub-
13 section may be conditional, and may be altered or amend-
14 ed before the decision on the merits.

15 **SEC. 402. NOTIFICATION.**

16 (a) NOTICE BY MAIL.—In any year 2000 action that
17 is maintained as a class action, the court, in addition to
18 any other notice required by applicable Federal or State
19 law, shall direct notice of the action to each member of
20 the class by United States mail, return receipt requested.
21 Persons whose actual receipt of the notice is not verified
22 by the court or by counsel for one of the parties shall be
23 excluded from the class unless those persons inform the
24 court in writing, on a date no later than the commence-

1 ment of trial or entry of judgment, that they wish to join
2 the class.

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

6 (1) concisely and clearly describe the nature of
7 the action;

8 (2) identify the jurisdiction whose law will gov-
9 ern the action and where the action is pending;

10 (3) identify any potential claims that class
11 counsel chose not to pursue so that the action would
12 satisfy class certification requirements;

13 (4) describe the fee arrangements with class
14 counsel, including the hourly fee being charged, or,
15 if it is a contingency fee, the percentage of the final
16 award which will be paid, including an estimate of
17 the total amount that would be paid if the requested
18 damages were to be granted; and

19 (5) describe the procedure for opting out of the
20 class.

21 (c) SETTLEMENT.—The parties to a year 2000 action
22 that is brought as a class action may not enter into, nor
23 request court approval of, any settlement or compromise
24 before the class has been certified.

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

2 Before determining whether to certify a class in a
3 year 2000 action, the court may decide a motion to dis-
4 miss or for summary judgment made by any party if the
5 court concludes that decision will promote the fair and ef-
6 ficient adjudication of the controversy and will not cause
7 undue delay.

8 **SEC. 404. FEDERAL JURISDICTION IN YEAR 2000 CLASS AC-**
9 **TIONS.**

10 (a) JURISDICTION.—Except as provided in subsection
11 (b), a year 2000 action may be brought as a class action
12 in the United States district court or removed to the ap-
13 propriate United States district court if the amount in
14 controversy is greater than the sum or value of \$1,000,000
15 (exclusive of interest and costs), computed on the basis
16 of all claims to be determined in the action.

17 (b) EXCEPTION.—A year 2000 action shall not be
18 brought or removed as a class action under this section
19 if—

20 (1)(A) the substantial majority of the members
21 of the proposed plaintiff class are citizens of a single
22 State of which the primary defendants are also citi-
23 zens; and

24 (B) the claims asserted will be governed pri-
25 marily by the laws of that State; or

1 (2) the primary defendants are States, State of-
2 ficials, or other governmental entities against whom
3 the United States district court may be foreclosed
4 from ordering relief.

5 **TITLE V—CLIENT PROTECTION**
6 **IN CONNECTION WITH YEAR**
7 **2000 ACTIONS**

8 **SEC. 501. SCOPE.**

9 This title applies to any year 2000 action asserted
10 or brought in Federal or State court.

11 **SEC. 502. DEFINITIONS.**

12 In this title:

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

17 (2) ATTORNEY’S SERVICES.—The term “attor-
18 ney’s services” means the professional advice or
19 counseling of or representation by an attorney, but
20 such term shall not include other assistance in-
21 curred, directly or indirectly, in connection with an
22 attorney’s services, such as administrative or secre-
23 tarial assistance, overhead, travel expenses, witness
24 fees, or preparation by a person other than the at-
25 torney of any study, analysis, report, or test.

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

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

10 (5) RETAIN.—The term “retain” means the act
11 of a client in engaging an attorney’s services, wheth-
12 er by express or implied agreement, by seeking and
13 obtaining the attorney’s services.

14 **SEC. 503. CONSUMER’S RIGHT TO UP-FRONT DISCLOSURE**
15 **OF INFORMATION REGARDING FEES AND**
16 **SETTLEMENT PROPOSALS.**

17 Before being retained by a client with respect to a
18 year 2000 claim or a year 2000 action, an attorney shall
19 disclose to the client the client’s rights under this title and
20 the client’s right to receive a written statement of the in-
21 formation described under sections 504 and 505.

22 **SEC. 504. INFORMATION AFTER INITIAL MEETING.**

23 (a) WRITTEN DISCLOSURE OF FEES.—Within 30
24 days after the disclosure described under section 503, an
25 attorney retained by a client with respect to a year 2000

1 claim or a year 2000 action shall provide a written state-
2 ment to the client setting forth—

3 (1) in the case of an attorney retained on an
4 hourly basis, the attorney's hourly fee for services in
5 pursuing the year 2000 claim or year 2000 action
6 and any conditions, limitations, restrictions, or other
7 qualifications on the fee, including likely expenses
8 and the client's obligation for those expenses; and

9 (2) in the case of an attorney retained on a
10 contingent fee basis, the attorney's contingent fee
11 for services in pursuing the year 2000 claim or year
12 2000 action and any conditions, limitations, restric-
13 tions, or other qualifications on the fee, including
14 likely expenses and the client's obligation for those
15 expenses.

16 (b) CONSUMER'S RIGHT TO TIMELY UPDATED IN-
17 FORMATION ABOUT FEES.—In addition to the require-
18 ments contained in subsection (a), in the case of an attor-
19 ney retained on an hourly basis, the attorney shall also
20 render regular statements (at least once each 90 days) to
21 the client containing a description of hourly charges and
22 expenses incurred in the pursuit of the client's year 2000
23 claim or year 2000 action by each attorney assigned to
24 the client's matter.

1 **SEC. 505. CONSUMER'S RIGHT TO TIMELY UPDATED INFOR-**
2 **MATION ABOUT SETTLEMENT PROPOSALS**
3 **AND DETAILED STATEMENT OF HOURS AND**
4 **FEES.**

5 An attorney retained by a client with respect to a
6 year 2000 claim or a year 2000 action shall advise the
7 client of all written settlement offers to the client and of
8 the attorney's estimate of the likelihood of achieving a
9 more or less favorable resolution to the year 2000 claim
10 or year 2000 action, the likely timing of such resolution,
11 and the likely attorney's fees and expenses required to ob-
12 tain such a resolution. An attorney retained by a client
13 with respect to a year 2000 claim or a year 2000 action
14 shall, within a reasonable time not later than 60 days after
15 the date on which the year 2000 claim or year 2000 action
16 is finally settled or adjudicated, provide a written state-
17 ment to the client containing—

18 (1) in the case of an attorney retained on an
19 hourly basis, the actual number of hours expended
20 by each attorney on behalf of the client in connec-
21 tion with the year 2000 claim or year 2000 action,
22 the attorney's hourly rate, and the total amount of
23 hourly fees; and

24 (2) in the case of an attorney retained on a
25 contingent fee basis, the total contingent fee for the

1 attorney's services in connection with the year 2000
2 claim or year 2000 action.

3 **SEC. 506. CLASS ACTIONS.**

4 An attorney representing a class or a defendant in
5 a year 2000 action maintained as a class action shall make
6 the disclosures required under this title to the presiding
7 judge, in addition to making such disclosures to each
8 named representative of the class. The presiding judge
9 shall, at the outset of the year 2000 action, determine a
10 reasonable attorney's fee by determining the appropriate
11 hourly rate and the maximum percentage of the recovery
12 to be paid in attorney's fees. Notwithstanding any other
13 provision of law or agreement to the contrary, the pre-
14 siding judge shall award attorney's fees only pursuant to
15 this title.

16 **SEC. 507. AWARD OF REASONABLE COSTS AND ATTORNEY'S**
17 **FEES AFTER AN OFFER OF SETTLEMENT.**

18 (a) OFFER OF SETTLEMENT.—With respect to any
19 year 2000 claim, any party may, at any time not less than
20 10 days before trial, serve upon any adverse party a writ-
21 ten offer to settle the year 2000 claim for money or prop-
22 erty, including a motion to dismiss the claim, and to enter
23 into a stipulation dismissing the claim or allowing judg-
24 ment to be entered according to the terms of the offer.

1 Any such offer, together with proof of service thereof, shall
2 be filed with the clerk of the court.

3 (b) ACCEPTANCE OF OFFER.—If the party receiving
4 an offer under subsection (a) serves written notice on the
5 offeror that the offer is accepted, either party may then
6 file with the clerk of the court the notice of acceptance,
7 together with proof of service thereof.

8 (c) FURTHER OFFERS NOT PRECLUDED.—The fact
9 that an offer under subsection (a) is made but not accept-
10 ed does not preclude a subsequent offer under subsection
11 (a). Evidence of an offer is not admissible for any purpose
12 except in proceedings to enforce a settlement, or to deter-
13 mine costs and expenses under this section.

14 (d) EXEMPTION OF CLAIMS.—At any time before
15 judgment is entered, the court, upon its own motion or
16 upon the motion of any party, may exempt from this sec-
17 tion any year 2000 claim that the court finds presents
18 a question of law or fact that is novel and important and
19 that substantially affects nonparties. If a claim is exempt-
20 ed from this section, all offers made by any party under
21 subsection (a) with respect to that claim shall be void and
22 have no effect.

23 (e) PETITION FOR PAYMENT OF COSTS, ETC.—If all
24 offers made by a party under subsection (a) with respect
25 to a year 2000 claim, including any motion to dismiss the

1 claim, are not accepted and the dollar amount of the judg-
2 ment, verdict, or order that is finally issued (exclusive of
3 costs, expenses, and attorneys' fees incurred after judg-
4 ment or trial) with respect to the year 2000 claim is not
5 more favorable to the offeree with respect to the year 2000
6 claim than the last such offer, the offeror may file with
7 the court, within 10 days after the final judgment, verdict,
8 or order is issued, a petition for payment of costs and ex-
9 penses, including attorneys' fees, incurred with respect to
10 the year 2000 claim from the date the last such offer was
11 made or, if the offeree made an offer under this section,
12 from the date the last such offer by the offeree was made.

13 (f) ORDER TO PAY COSTS, ETC.—If the court finds,
14 pursuant to a petition filed under subsection (e) with re-
15 spect to a year 2000 claim, that the dollar amount of the
16 judgment, verdict, or order that is finally issued is not
17 more favorable to the offeree with respect to the year 2000
18 claim than the last such offer, the court shall order the
19 offeree to pay the offeror's costs and expenses, including
20 attorneys' fees, incurred with respect to the year 2000
21 claim from the date the last offer was made or, if the
22 offeree made an offer under this section, from the date
23 the last such offer by the offeree was made, unless the
24 court finds that requiring the payment of such costs and
25 expenses would be manifestly unjust.

1 (g) AMOUNT OF ATTORNEY'S FEES.—Attorney's fees
2 under subsection (f) shall be a reasonable attorney's fee
3 attributable to the year 2000 claim involved, calculated on
4 the basis of an hourly rate which may not exceed that
5 which the court considers acceptable in the community in
6 which the attorney practices law, taking into account the
7 attorney's qualifications and experience and the com-
8 plexity of the case, except that the attorney's fees under
9 subsection (f) may not exceed—

10 (A) the actual cost incurred by the offeree for
11 an attorney's fee payable to an attorney for services
12 in connection with the year 2000 claim; or

13 (B) if no such cost was incurred by the offeree
14 due to a contingency fee agreement, a reasonable
15 cost that would have been incurred by the offeree for
16 an attorney's noncontingent fee payable to an attor-
17 ney for services in connection with the year 2000
18 claim.

19 (h) INAPPLICABILITY TO EQUITABLE REMEDIES.—
20 This section does not apply to any claim seeking an equi-
21 table remedy.

22 (i) INAPPLICABILITY TO CLASS ACTIONS.—This sec-
23 tion does not apply with respect to a year 2000 action
24 brought as a class action.

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.

Passed the House of Representatives May 12, 1999.

Attest: **JEFF TRANDAHL,**
Clerk.