

105TH CONGRESS  
2D SESSION

# S. 2392

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

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## IN THE SENATE OF THE UNITED STATES

JULY 30, 1998

Mr. BENNETT (by request) (for himself, Mr. DODD, Mr. MOYNIHAN, Mr. KOHL, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Year 2000 Information  
5 Disclosure Act”.

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

7 (a) FINDINGS.—The Congress finds the following:

8 (1) Thousands of computer systems, software,  
9 and semiconductors are not capable of recognizing

1 certain dates in 1999 and after December 31, 1999,  
2 and will read dates in the year 2000 and thereafter  
3 as if they represent the year 1900 or thereafter.  
4 This could cripple systems that are essential to the  
5 functioning of markets, commerce, consumer prod-  
6 ucts, utilities, government, and safety systems, in  
7 the United States and throughout the world. Re-  
8 programming or replacing affected systems before  
9 this problem cripples essential systems is a matter of  
10 national and global interest.

11 (2) The prompt and thorough disclosure and  
12 exchange of information related to year 2000 readi-  
13 ness of entities, products, and services would greatly  
14 enhance the ability of public and private entities to  
15 improve their year 2000 readiness and, thus, is a  
16 matter of national importance and a vital factor in  
17 minimizing disruption to the Nation's economic well-  
18 being.

19 (3) Concern about the potential for legal liabil-  
20 ity associated with the disclosure and exchange of  
21 year 2000 compliance information is impeding the  
22 disclosure and exchange of such information.

23 (4) The capability to freely disseminate and ex-  
24 change information relating to year 2000 readiness  
25 with the public and with other companies without

1 undue concern about litigation is critical to the abil-  
2 ity of public and private entities to address year  
3 2000 needs in a timely manner.

4 (5) The national interest will be served by uni-  
5 form legal standards in connection with the disclo-  
6 sure and exchange of year 2000 readiness informa-  
7 tion that will promote disclosures and exchanges of  
8 such information in a timely fashion.

9 (b) PURPOSES.—Based upon the powers contained in  
10 article I, section 8, clause 3 of the United States Constitu-  
11 tion, the purposes of this Act are to promote the free dis-  
12 closure and exchange of information related to year 2000  
13 readiness and to lessen burdens on interstate commerce  
14 by establishing certain uniform legal principles in connec-  
15 tion with the disclosure and exchange of information relat-  
16 ed to year 2000 readiness.

17 **SEC. 3. DEFINITIONS.**

18 For purposes of this Act, the following definitions  
19 apply:

20 (1) YEAR 2000 STATEMENT.—“Year 2000 state-  
21 ment” means any statement—

22 (A) concerning an assessment, projection,  
23 or estimate concerning year 2000 processing ca-  
24 pabilities of any entity or entities, product, or  
25 service, or a set of products or services;

1 (B) concerning plans, objectives, or time-  
2 tables for implementing or verifying the year  
3 2000 processing capabilities of an entity or en-  
4 tities, a product, or service, or a set of products  
5 or services; or

6 (C) concerning test plans, test dates, test  
7 results, or operational problems or solutions re-  
8 lated to year 2000 processing by—

9 (i) products; or

10 (ii) services that incorporate or utilize  
11 products.

12 (2) STATEMENT.—“Statement” means a dislo-  
13 sure or other conveyance of information by one party  
14 to another or to the public, in any form or medium  
15 whatsoever, excluding, for the purposes of any ac-  
16 tions brought under the securities law, as that term  
17 is defined in section 3(a)(47) of the Securities Ex-  
18 change Act of 1934 (15 U.S.C. 78c(a)(47)), docu-  
19 ments or materials filed with the Securities and Ex-  
20 change Commission, or with Federal banking regu-  
21 lators pursuant to section 12(i) of the Securities Ex-  
22 change Act of 1934, or disclosures or writings made  
23 specifically in connection with the sale or offering  
24 of securities.

1           (3) YEAR 2000 PROCESSING.—“Year 2000 proc-  
2           essing” means the processing (including, without  
3           limitation, calculating, comparing, sequencing, dis-  
4           playing, or storing), transmitting, or receiving of  
5           date or date/time data from, into, and between the  
6           twentieth and twenty-first centuries, and the years  
7           1999 and 2000, and leap year calculations.

8           (4) YEAR 2000 INTERNET WEBSITE.—“Year  
9           2000 Internet Website” means an Internet website  
10          or other similar electronically accessible service, des-  
11          ignated on the website or service by the person cre-  
12          ating or controlling the website or service as an area  
13          where year 2000 statements and other information  
14          about the year 2000 processing capabilities of an en-  
15          tity or entities, a product, service, or a set of prod-  
16          ucts or services, are posted or otherwise made acces-  
17          sible to the general public.

18          (5) COVERED ACTION.—“Covered action”  
19          means a civil action arising under Federal or State  
20          law except for any civil action arising under Federal  
21          or State law brought by a Federal, State, or other  
22          public entity, agency, or authority acting in a regu-  
23          latory, supervisory, or enforcement capacity.

1           (6) REPUBLICATION.—“Republication” means  
2 any repetition of a statement originally made by an-  
3 other.

4           (7) CONSUMER.—“Consumer” means an indi-  
5 vidual who buys a consumer product other than for  
6 purposes of resale.

7           (8) CONSUMER PRODUCT.—“Consumer prod-  
8 uct” means any personal property or service which  
9 is normally used for personal, family, or household  
10 purposes.

11 **SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.**

12       (a) IN GENERAL.—Except as otherwise provided in  
13 subsection (c), in any covered action, to the extent such  
14 action is based on an allegedly false, inaccurate, or mis-  
15 leading year 2000 statement, the maker of any such state-  
16 ment shall not be liable under Federal or State law with  
17 respect thereto unless the claimant establishes, in addition  
18 to all other requisite elements of the applicable action, that  
19 the statement was material, and—

20           (1) where the statement was not a republica-  
21 tion, that the statement was—

22                   (A) made with knowledge that the state-  
23 ment was false, inaccurate, or misleading;

24                   (B) made with an intent to mislead or de-  
25 ceive; or

1 (C) made with a grossly negligent failure  
2 to determine or verify that the statement was  
3 accurate and not false or misleading; and

4 (2) where the statement was a republication of  
5 a statement regarding a third party, that the repub-  
6 lication was made—

7 (A) with knowledge that the statement was  
8 false, inaccurate, or misleading; or

9 (B) without a disclosure by the maker that  
10 the republished or repeated statement is based  
11 on information supplied by another and that  
12 the maker has not verified the statement.

13 (b) YEAR 2000 INTERNET WEBSITE.—In any cov-  
14 ered action in which the adequacy of notice about year  
15 2000 processing is at issue and no clearly more effective  
16 method of notice is practicable, the posting of a notice by  
17 the entity purporting to have provided such notice on that  
18 entity's year 2000 Internet website shall be presumed to  
19 be an adequate mechanism for providing such notice.  
20 Nothing in this subsection (b) shall—

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

24 (2) create a duty to provide notice about year  
25 2000 processing;

1           (3) preclude or suggest the use of any other  
2           medium for notice about year 2000 processing or re-  
3           quire the use of an Internet website; or

4           (4) mandate the content or timing of any no-  
5           tices about year 2000 processing.

6           (c) DEFAMATION OR SIMILAR CLAIMS.—In any cov-  
7           ered action arising under any Federal or State law of defa-  
8           mation, or any Federal or State law relating to trade dis-  
9           paragement or a similar claim, to the extent such action  
10          is based on an allegedly false year 2000 statement, wheth-  
11          er oral or published in any medium, the maker of any such  
12          year 2000 statement shall not be liable with respect to  
13          such statement, unless the claimant establishes by clear  
14          and convincing evidence, in addition to all other requisite  
15          elements of the applicable action, that the statement was  
16          made with knowledge that the statement was false or with  
17          reckless disregard as to its truth or falsity.

18          (d) LIMITATION ON EFFECT OF YEAR 2000 STATE-  
19          MENTS.—In any covered action, no year 2000 statement  
20          shall be interpreted or construed as an amendment to or  
21          alteration of a written contract or written warranty,  
22          whether entered into by a public or private party. This  
23          subsection (d) shall not apply—

24                 (1) to the extent the party whose statement is  
25                 alleged to have amended or altered a contract or



1 warranty has otherwise agreed in writing to so alter  
2 or amend the written contract or written warranty;

3 (2) to year 2000 statements made in conjunc-  
4 tion with the formation of the written contract or  
5 written warranty; or

6 (3) where the contract or warranty specifically  
7 provides for its amendment or alteration through the  
8 making of a year 2000 statement.

9 Existing law shall apply to determine what effect, if any,  
10 a year 2000 statement within the scope of paragraph (1),  
11 (2) or (3) has on a written contract or written warranty.

12 (e) SPECIAL DATA GATHERING.—A Federal entity,  
13 agency, or authority may expressly designate requests for  
14 the voluntary provision of information relating to year  
15 2000 processing (including without limitation, year 2000  
16 statements) as “Special Year 2000 Data Gathering Re-  
17 quests” made pursuant to this subsection (e). Information  
18 provided in response to such requests shall be prohibited  
19 from disclosure under the Freedom of Information Act (5  
20 U.S.C. 552 et. seq.), and may not be used by any Federal  
21 entity, agency, or authority, directly or indirectly, in any  
22 civil action arising under any Federal or State law, pro-  
23 vided, however, that nothing in this subsection (e) shall  
24 preclude a Federal entity, agency, or authority from sepa-  
25 rately obtaining the information submitted in response to

1 this subsection (e) through the use of independent legal  
2 authorities and using such separately obtained informa-  
3 tion in any action.

4 **SEC. 5. EXCLUSIONS.**

5 (a) CONSUMER INFORMATION.—This Act does not  
6 cover statements made directly to a consumer in connec-  
7 tion with the sale of a consumer product by the seller or  
8 manufacturer or provider of the consumer product.

9 (b) EFFECT ON INFORMATION DISCLOSURE.—This  
10 Act does not affect, abrogate, amend, or alter, and shall  
11 not be construed to affect, abrogate, amend, or alter, the  
12 authority of a Federal or State entity, agency, or authority  
13 to enforce a requirement to provide, disclose, or not to  
14 disclose, information under a Federal or State statute or  
15 regulation or to enforce such statute or regulation.

16 (c) CONTRACTS AND OTHER CLAIMS.—Except as  
17 may be otherwise provided in subsection 4(d), this Act  
18 does not affect, abrogate, amend, or alter, and shall not  
19 be construed to affect, abrogate, amend, or alter, any right  
20 by written contract, whether entered into by a public or  
21 private party, under any Federal or State law, nor shall  
22 it preclude claims not based solely on year 2000 state-  
23 ments.

24 (d) DUTY OR STANDARD OF CARE.—This Act shall  
25 not be deemed to impose upon the maker or publisher of

1 any year 2000 statement any increased obligation, duty  
2 or standard of care than is otherwise applicable under  
3 Federal or State law. Nor does this Act preclude any party  
4 from making or providing any additional disclaimer or like  
5 provisions in connection with any year 2000 statement.

6 (e) TRADEMARKS.—This Act does not affect, abro-  
7 gate, amend, or alter, and shall not be construed to affect,  
8 abrogate, amend, or alter, any right in a trademark, trade  
9 name, or service mark, under any Federal or State law.

10 (f) INJUNCTIVE RELIEF.—Nothing in this Act shall  
11 be deemed to preclude a claimant from seeking temporary  
12 or permanent injunctive relief with respect to a year 2000  
13 statement.

14 **SEC. 6. APPLICABILITY.**

15 This Act shall apply to any year 2000 statement  
16 made on or after July 14, 1998, through July 14, 2001.  
17 This Act shall not affect or apply to any action pending  
18 on July 14, 1998.

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