

Calendar No. 584

105TH CONGRESS
2D Session

S. 2392

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.

SEPTEMBER 17, 1998

Reported with an amendment and an amendment to the title

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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.

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

SEPTEMBER 17, 1998

Reported by Mr. HATCH, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in italic]

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”.

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

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

3 (1) Thousands of computer systems, software,
4 and semiconductors are not capable of recognizing
5 certain dates in 1999 and after December 31, 1999,
6 and will read dates in the year 2000 and thereafter
7 as if they represent the year 1900 or thereafter.
8 This could cripple systems that are essential to the
9 functioning of markets, commerce, consumer prod-
10 ucts, utilities, government, and safety systems, in
11 the United States and throughout the world. Re-
12 programming or replacing affected systems before
13 this problem cripples essential systems is a matter of
14 national and global interest.

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

23 (3) Concern about the potential for legal liabil-
24 ity associated with the disclosure and exchange of
25 year 2000 compliance information is impeding the
26 disclosure and exchange of such information.

1 (4) The capability to freely disseminate and ex-
 2 change information relating to year 2000 readiness
 3 with the public and with other companies without
 4 undue concern about litigation is critical to the abil-
 5 ity of public and private entities to address year
 6 2000 needs in a timely manner.

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

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

20 **SEC. 3. DEFINITIONS.**

21 For purposes of this Act, the following definitions
 22 apply:

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

(A) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of any entity or entities, product, or service, or a set of products or services;

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

(C) 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.

(2) STATEMENT.—“Statement” means a disclosure or other conveyance of information by one party to another or to the public, in any form or medium whatsoever, excluding, for the purposes of any actions brought under the securities law, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators pursuant to section 12(i) of the Securities Ex-

1 change Act of 1934, or disclosures or writings made
2 specifically in connection with the sale or offering
3 of securities.

4 (3) YEAR 2000 PROCESSING.—“Year 2000 proc-
5 essing” means the processing (including, without
6 limitation, calculating, comparing, sequencing, dis-
7 playing, or storing), transmitting, or receiving of
8 date or date/time data from, into, and between the
9 twentieth and twenty-first centuries, and the years
10 1999 and 2000, and leap year calculations.

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

21 (5) COVERED ACTION.—“Covered action”
22 means a civil action arising under Federal or State
23 law except for any civil action arising under Federal
24 or State law brought by a Federal, State, or other

1 public entity, agency, or authority acting in a regu-
 2 latory, supervisory, or enforcement capacity.

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

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

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

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

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

22 ~~(1)~~ where the statement was not a republica-
 23 tion, that the statement was—

24 ~~(A)~~ made with knowledge that the state-
 25 ment was false, inaccurate, or misleading;

1 ~~(B)~~ made with an intent to mislead or de-
 2 ceive; or

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

6 ~~(2)~~ where the statement was a republication of
 7 a statement regarding a third party; that the repub-
 8 lication was made—

9 ~~(A)~~ with knowledge that the statement was
 10 false, inaccurate, or misleading; or

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

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

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

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

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

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

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

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

1 (1) to the extent the party whose statement is
2 alleged to have amended or altered a contract or
3 warranty has otherwise agreed in writing to so alter
4 or amend the written contract or written warranty;

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

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

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

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

1 preclude a Federal entity, agency, or authority from sepa-
 2 rately obtaining the information submitted in response to
 3 this subsection (c) through the use of independent legal
 4 authorities and using such separately obtained informa-
 5 tion in any action.

6 **SEC. 5. EXCLUSIONS.**

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

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

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

1 (d) DUTY OR STANDARD OF CARE.—This Act shall
 2 not be deemed to impose upon the maker or publisher of
 3 any year 2000 statement any increased obligation, duty
 4 or standard of care than is otherwise applicable under
 5 Federal or State law. Nor does this Act preclude any party
 6 from making or providing any additional disclaimer or like
 7 provisions in connection with any year 2000 statement.

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

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

16 **SEC. 6. APPLICABILITY.**

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

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Year 2000 Information*
 23 *and Readiness Disclosure Act”.*

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

25 (a) FINDINGS.—*Congress finds the following:*

1 (1)(A) *At least thousands but possibly millions of*
2 *information technology computer systems, software*
3 *programs, and semiconductors are not capable of rec-*
4 *ognizing certain dates in 1999 and after December*
5 *31, 1999, and will read dates in the year 2000 and*
6 *thereafter as if those dates represent the year 1900 or*
7 *thereafter or will fail to process those dates.*

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

14 (C) *Reprogramming or replacing affected sys-*
15 *tems before the problem incapacitates essential sys-*
16 *tems is a matter of national and global interest.*

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

20 (A) *would greatly enhance the ability of*
21 *public and private entities to improve their year*
22 *2000 readiness; and*

23 (B) *is therefore a matter of national impor-*
24 *tance and a vital factor in minimizing any po-*

1 *tential year 2000 related disruption to the Na-*
2 *tion's economic well-being and security.*

3 *(3) Concern about the potential for legal liability*
4 *associated with the disclosure and exchange of year*
5 *2000 readiness information is impeding the disclosure*
6 *and exchange of such information.*

7 *(4) The capability to freely disseminate and ex-*
8 *change information relating to year 2000 readiness,*
9 *solutions, test practices and test results, with the pub-*
10 *lic and other entities without undue concern about*
11 *litigation is critical to the ability of public and pri-*
12 *vate entities to address year 2000 needs in a timely*
13 *manner.*

14 *(5) The national interest will be served by uni-*
15 *form legal standards in connection with the disclosure*
16 *and exchange of year 2000 readiness information that*
17 *will promote disclosures and exchanges of such infor-*
18 *mation in a timely fashion.*

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

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

1 (2) *to assist consumers, small businesses, and*
 2 *local governments in effectively and rapidly respond-*
 3 *ing to year 2000 problems; and*

4 (3) *to lessen burdens on interstate commerce by*
 5 *establishing certain uniform legal principles in con-*
 6 *nection with the disclosure and exchange of informa-*
 7 *tion related to year 2000 readiness.*

8 **SEC. 3. DEFINITIONS.**

9 *In this Act:*

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

12 (A) *has the meaning given to it in sub-*
 13 *section (a) of the first section of the Clayton Act*
 14 *(15 U.S.C. 12(a)), except that such term includes*
 15 *section 5 of the Federal Trade Commission Act*
 16 *(15 U.S.C. 45) to the extent such section 5 ap-*
 17 *plies to unfair methods of competition; and*

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

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

23 (3) *CONSUMER PRODUCT.*—*The term “consumer*
 24 *product” means any personal property or service*

1 *which is normally used for personal, family, or house-*
2 *hold purposes.*

3 (4) *COVERED ACTION.*—*The term “covered ac-*
4 *tion” means any civil action of any kind, whether*
5 *arising under Federal or State law, except for any*
6 *civil action arising under Federal or State law*
7 *brought by a Federal, State, or other public entity,*
8 *agency, or authority acting in a regulatory, super-*
9 *visory, or enforcement capacity.*

10 (5) *MAKER.*—*The term “maker” means each per-*
11 *son or entity, including a State or political subdivi-*
12 *sion thereof, that issues or publishes any year 2000*
13 *statement, or develops or prepares, or assists in, con-*
14 *tributes to, or reviews, reports or comments on dur-*
15 *ing, or approves, or otherwise takes part in the pre-*
16 *paring, developing, issuing, approving, or publishing*
17 *any year 2000 statement.*

18 (6) *REPUBLICATION.*—*The term “republication”*
19 *means any repetition, in whole or in part, of a year*
20 *2000 statement originally made by another.*

21 (7) *YEAR 2000 INTERNET WEBSITE.*—*The term*
22 *“year 2000 Internet website” means an Internet*
23 *website or other similar electronically accessible serv-*
24 *ice, clearly designated on the website or service by the*
25 *person or entity creating or controlling the content of*

1 *the website or service as an area where year 2000*
2 *statements concerning that person or entity are posted*
3 *or otherwise made accessible to the general public.*

4 (8) *YEAR 2000 PROCESSING.*—*The term “year*
5 *2000 processing” means the processing (including cal-*
6 *culating, comparing, sequencing, displaying, or stor-*
7 *ing), transmitting, or receiving of date data from,*
8 *into, and between the 20th and 21st centuries, and*
9 *during the years 1999 and 2000, and leap year cal-*
10 *culations.*

11 (9) *YEAR 2000 READINESS DISCLOSURE.*—*The*
12 *term “year 2000 readiness disclosure” means any*
13 *written year 2000 statement, clearly identified on its*
14 *face as a year 2000 readiness disclosure inscribed on*
15 *a tangible medium or stored in an electronic or other*
16 *medium and retrievable in perceivable form and*
17 *issued or published by or with the approval of an en-*
18 *tity with respect to year 2000 processing of that en-*
19 *tity or of products or services offered by that entity.*

20 (10) *YEAR 2000 STATEMENT.*—

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

1 (i) concerning an assessment, projec-
 2 tion, or estimate concerning year 2000
 3 processing capabilities of any entity, prod-
 4 uct, or service, or a set of products and serv-
 5 ices;

6 (ii) concerning plans, objectives, or
 7 timetables for implementing or verifying the
 8 year 2000 processing capabilities of an en-
 9 tity, a product, or service, or a set of prod-
 10 ucts or services;

11 (iii) concerning test plans, test dates,
 12 test results, or operational problems or solu-
 13 tions related to year 2000 processing by—

14 (I) products; or

15 (II) services that incorporate or
 16 utilize products; or

17 (iv) reviewing, commenting on, or oth-
 18 erwise directly or indirectly relating to year
 19 2000 processing capabilities.

20 (B) NOT INCLUDED.—The term does not in-
 21 clude for the purposes of any action brought
 22 under the securities laws, as that term is defined
 23 in section 3(a)(47) of the Securities Exchange
 24 Act of 1934 (15 U.S.C. 78c(a)(47)), any docu-
 25 ment or material filed with the Securities and

1 *Exchange Commission, or with Federal banking*
 2 *regulators, pursuant to section 12(i) of the Secu-*
 3 *rities Exchange Act of 1934 (15 U.S.C. 781(i)),*
 4 *or any disclosure or writing that when made ac-*
 5 *companied the solicitation of an offer or sale of*
 6 *securities.*

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

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

13 *(1) a disclosure may serve as the basis for a*
 14 *claim for anticipatory breach or repudiation or a*
 15 *similar claim against the maker, to the extent pro-*
 16 *vided by applicable law; and*

17 *(2) the court in any covered action shall have*
 18 *discretion to limit application of this subsection in*
 19 *any case in which the court determines that the mak-*
 20 *er's use of that disclosure amounts to bad faith, or*
 21 *fraud, or is otherwise is beyond what is reasonable to*
 22 *achieve the purposes of this Act.*

23 *(b) FALSE, MISLEADING AND INACCURATE YEAR 2000*
 24 *STATEMENTS.—Except as otherwise provided in subsection*
 25 *(c), in any covered action, to the extent that such action*

1 *is based on an allegedly false, inaccurate, or misleading*
 2 *year 2000 statement, the maker of that year 2000 statement*
 3 *shall not be liable under Federal or State law with respect*
 4 *to that year 2000 statement unless the claimant establishes,*
 5 *in addition to all other requisite elements of the applicable*
 6 *action, by clear and convincing evidence, that—*

7 (1) *the year 2000 statement was material; and*

8 (2)(A) *to the extent the year 2000 statement was*
 9 *not a republication of a year 2000 statement origi-*
 10 *nally made by a third party, that the maker made the*
 11 *year 2000 statement—*

12 (i) *with actual knowledge that the year*
 13 *2000 statement was false, inaccurate, or mislead-*
 14 *ing;*

15 (ii) *with intent to deceive or mislead; or*

16 (iii) *with a reckless disregard as to the ac-*
 17 *curacy of the year 2000 statement; or*

18 (B) *to the extent the year 2000 statement was a*
 19 *republication of a year 2000 statement originally*
 20 *made by a third party, that the maker of the republi-*
 21 *cation made the year 2000 statement—*

22 (i) *with actual knowledge that the year*
 23 *2000 statement was false, inaccurate, or mislead-*
 24 *ing;*

25 (ii) *with intent to deceive or mislead; or*

1 (iii) without notice in that year 2000 state-
2 ment that—

3 (I) the maker has not verified the con-
4 tents of the republication; or

5 (II) the maker is not the source of the
6 republished year 2000 statement, the repub-
7 lished statement is based on information
8 supplied by another person or entity, and
9 the notice or republished statement identi-
10 fies the source of the republished statement.

11 (c) *DEFAMATION OR SIMILAR CLAIMS.*—In a covered
12 action arising under any Federal or State law of defama-
13 tion, trade disparagement, or a similar claim, to the extent
14 such action is based on an allegedly false, inaccurate, or
15 misleading year 2000 statement, the maker of that year
16 2000 statement shall not be liable with respect to that year
17 2000 statement, unless the claimant establishes by clear and
18 convincing evidence, in addition to all other requisite ele-
19 ments of the applicable action, that the year 2000 statement
20 was made with knowledge that the year 2000 statement was
21 false or made with reckless disregard as to its truth or fal-
22 sity.

23 (d) *YEAR 2000 INTERNET WEBSITE.*—

24 (1) *IN GENERAL.*—Except as provided in para-
25 graph (2), in any covered action, other than a covered

1 *action involving personal injury or serious physical*
 2 *damage to property, in which the adequacy of notice*
 3 *about year 2000 processing is at issue, the posting, in*
 4 *a commercially reasonable manner and for a commer-*
 5 *cially reasonable duration, of a notice by the entity*
 6 *charged with giving such notice on the year 2000*
 7 *Internet website of that entity shall be deemed to be*
 8 *an adequate mechanism for providing that notice.*

9 (2) *EXCEPTION.—Under paragraph (1) the no-*
 10 *tice shall not be adequate if the trier of fact finds that*
 11 *the use of the mechanism of notice—*

12 (A) *is contrary to express prior representa-*
 13 *tions made by the party giving notice;*

14 (B) *is materially inconsistent with the regu-*
 15 *lar course of dealing between the parties; or*

16 (C) *occurs where there have been no prior*
 17 *representations regarding the mechanism of no-*
 18 *tice and no regular course of dealing exists be-*
 19 *tween the parties and where actual notice is*
 20 *clearly the most commercially reasonable means*
 21 *of providing notice.*

22 (3) *CONSTRUCTION.—Nothing in this subsection*
 23 *shall—*

24 (A) *alter or amend any Federal or State*
 25 *statute or regulation requiring that notice about*

1 year 2000 processing be provided using a dif-
2 ferent mechanism;

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

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

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

10 (e) *LIMITATION ON EFFECT OF YEAR 2000 STATE-*
11 *MENTS.—*

12 (1) *IN GENERAL.—In any covered action, a year*
13 *2000 statement shall not be interpreted or construed*
14 *as an amendment to or alteration of a contract or*
15 *warranty, whether entered into by or approved for a*
16 *public or private entity.*

17 (2) *NOT APPLICABLE.—*

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

20 (i) *to the extent the party whose year*
21 *2000 statement is alleged to have amended*
22 *or altered a contract or warranty has other-*
23 *wise agreed in writing to so alter or amend*
24 *the contract or warranty;*

1 (ii) to a year 2000 statement made in
2 conjunction with the formation of the con-
3 tract or warranty; or

4 (iii) if the contract or warranty spe-
5 cifically provides for its amendment or al-
6 teration through the making of a year 2000
7 statement.

8 (B) *RULE OF CONSTRUCTION.*—Nothing in
9 this subsection is intended to affect applicable
10 Federal or State law in effect as of the date of
11 enactment of this Act with respect to determin-
12 ing the extent to which a year 2000 statement
13 within the scope of clause (i), (ii), or (iii) of sub-
14 paragraph (A) affects a contract or warranty.

15 (f) *SPECIAL DATA GATHERING.*—

16 (1) *IN GENERAL.*—A Federal entity, agency, or
17 authority may expressly designate a request for the
18 voluntary provision of information relating to year
19 2000 processing, including year 2000 statements, as
20 a special year 2000 data gathering request made pur-
21 suant to this subsection.

22 (2) *SPECIFICS.*—A special year 2000 data gath-
23 ering request made under this subsection shall specify
24 a Federal entity, agency, or authority, or with the
25 consent of the designee, another public or private en-

1 *tity, agency or authority, to gather responses to the*
 2 *request.*

3 (3) *PROTECTIONS.—Except with the express con-*
 4 *sent or permission of the provider of information de-*
 5 *scribed in paragraph (1), any year 2000 statements*
 6 *or other such other information provided by a party*
 7 *in response to a special year 2000 data gathering re-*
 8 *quest made under this subsection—*

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

13 (B) *shall be prohibited from disclosure to*
 14 *any third party; and*

15 (C) *may not be used by any Federal entity,*
 16 *agency, or authority or by any third party, di-*
 17 *rectly or indirectly, in any civil action arising*
 18 *under any Federal or State law.*

19 (4) *EXCEPTIONS.—*

20 (A) *INFORMATION OBTAINED ELSE-*
 21 *WHERE.—Nothing in this subsection shall pre-*
 22 *clude a Federal entity, agency, or authority or*
 23 *any third party from separately obtaining the*
 24 *information submitted in response to a request*
 25 *under this subsection through the use of inde-*

pendent 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 the 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 antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of—

(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.*

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

5 (c) *EXCEPTION TO EXEMPTION.*—Subsection (a) shall
 6 not apply with respect to conduct that involves or results
 7 in an agreement to boycott any person, to allocate a market
 8 or fix prices or output.

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

11 **SEC. 6. EXCLUSIONS.**

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

18 (b) *CONTRACTS AND OTHER CLAIMS.*—

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

1 (2) *OTHER CLAIMS.*—*In any covered action*
 2 *brought by a consumer, this Act does not apply to a*
 3 *year 2000 statement expressly made in a solicitation,*
 4 *including an advertisement or offer to sell, to that*
 5 *consumer by a seller, manufacturer, or provider of a*
 6 *consumer product.*

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

10 (c) *DUTY OR STANDARD OF CARE.*—

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

16 (2) *ADDITIONAL DISCLOSURE.*—*This Act does*
 17 *not preclude any party from making or providing*
 18 *any additional disclosure, disclaimer, or similar pro-*
 19 *visions in connection with any year 2000 readiness*
 20 *disclosure or year 2000 statement.*

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

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

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

10 **SEC. 7. APPLICABILITY.**

11 (a) *EFFECTIVE DATE.*—

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

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

18 (3) *APPLICATION TO STATEMENTS AND DISCLO-*
 19 *SURES.*—*Except as provided in subsection (b)—*

20 (A) *this Act shall apply to any year 2000*
 21 *statement made on or after July 14, 1998*
 22 *through July 14, 2001; and*

23 (B) *this Act shall apply to any year 2000*
 24 *readiness disclosure made after the date of enact-*
 25 *ment of this Act through July 14, 2001.*

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

2 ***(1) IN GENERAL.—****For the purposes of section*
3 *4(a), a person or entity that issued or published a*
4 *year 2000 statement after January 1, 1996, and be-*
5 *fore the date of enactment of this Act, may designate*
6 *that year 2000 statement as a year 2000 readiness*
7 *disclosure if—*

8 ***(A)*** *the year 2000 statement complied with*
9 *the requirements of section 4(b) when made,*
10 *other than being clearly designated on its face as*
11 *a disclosure;*

12 ***(B)*** *within 45 days after the date of enact-*
13 *ment of this Act, the person or entity seeking the*
14 *designation provides notice—*

15 ***(i)*** *by individual notice that meets the*
16 *requirements of paragraph (2) to all recipi-*
17 *ents of the applicable year 2000 statement;*
18 *and*

19 ***(ii)*** *a prominent posting notice that*
20 *meets the requirements of paragraph (2) on*
21 *its year 2000 Internet website, commencing*
22 *prior to the end of the 45-day period under*
23 *this subparagraph and extending for a min-*
24 *imum of 45 consecutive days and also by*
25 *using the same method of notification used*

1 to originally provide the applicable year
2 2000 statement.

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

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

8 (B) include a copy of the year 2000 state-
9 ment with a legend labeling the statement as a
10 “Year 2000 Readiness Disclosure”.

11 (c) *EXCEPTION.*—No designation of a year 2000 state-
12 ment as a disclosure under subsection (b) shall apply with
13 respect to any person or entity that—

14 (1) proves, by clear and convincing evidence,
15 that it relied on the year 2000 statement prior to the
16 receipt of notice described above and it would be prej-
17 udiced by the retroactive designation of the year 2000
18 statement as a disclosure; and

19 (2) provides to the person or entity seeking the
20 designation a written notice objecting to the designa-
21 tion within 45 days after receipt of individual notice
22 under subsection (b)(2)(B)(i), or within 180 days
23 after the date of enactment of this Act, in the case of
24 notice provided under subsection (b)(2)(B)(ii).

1 **SEC. 8. NATIONAL INFORMATION CLEARINGHOUSE AND**
2 **WEBSITE.**

3 (a) *NATIONAL WEBSITE.*—

4 (1) *IN GENERAL.*—*The Administrator of General*
5 *Services shall create and maintain a national year*
6 *2000 website, and promote its availability, designed*
7 *to assist consumers, small business, and local govern-*
8 *ments in obtaining information from other govern-*
9 *mental websites, hotlines, or information clearing-*
10 *houses about year 2000 Processing of computers, sys-*
11 *tems, products and services, including websites main-*
12 *tained by independent agencies and other depart-*
13 *ments.*

14 (2) *CONSULTATION.*—*In creating the national*
15 *year 2000 website, the Administrator of General Serv-*
16 *ices shall consult with—*

17 (A) *the Director of the Office of Manage-*
18 *ment and Budget;*

19 (B) *the Administrator of the Small Busi-*
20 *ness Administration;*

21 (C) *the Consumer Product Safety Commis-*
22 *sion;*

23 (D) *officials of State and local governments;*

24 (E) *the Director of the National Institute of*
25 *Standards and Technology;*

1 (F) representatives of consumer and indus-
 2 try groups; and

3 (G) representatives of other entities, as de-
 4 termined appropriate.

5 (b) *REPORT.*—*The Administrator of General Services*
 6 *shall submit a preliminary report to the Committees on the*
 7 *Judiciary of the Senate and the House of Representatives*
 8 *and the Committee on Governmental Affairs of the Senate*
 9 *and the Committee on Government Reform and Oversight*
 10 *of the House of Representatives not later than 60 days after*
 11 *the date of enactment of this Act regarding planning to*
 12 *comply with the requirements of this section.*

Amend the title so as to read: “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.”.