

106TH CONGRESS  
1ST SESSION

# S. 461

To assure that innocent users and businesses gain access to solutions to the year 2000 problem-related failures through fostering an incentive to settle year 2000 lawsuits that may disrupt significant sectors of the American economy.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 1999

Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To assure that innocent users and businesses gain access to solutions to the year 2000 problem-related failures through fostering an incentive to settle year 2000 lawsuits that may disrupt significant sectors of the American economy.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Year 2000 Fairness and Responsibility Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings, purposes, and scope.
- Sec. 3. Definitions.

TITLE I—PRELITIGATION PROCEDURES FOR YEAR 2000 CIVIL  
ACTIONS

- Sec. 101. Pre-trial notice.
- Sec. 102. Alternative dispute resolution.
- Sec. 103. Pleading requirements.
- Sec. 104. Duty to mitigate.

TITLE II—YEAR 2000 CIVIL ACTIONS INVOLVING CONTRACTS

- Sec. 201. Contract preservation.
- Sec. 202. Evidence of reasonable efforts and defenses.
- Sec. 203. Damages limitation.

TITLE III—YEAR 2000 CIVIL ACTIONS INVOLVING TORT AND  
OTHER NONCONTRACTUAL CLAIMS

- Sec. 301. Proportionate liability.
- Sec. 302. State of mind and foreseeability.
- Sec. 303. Reasonable efforts defense.
- Sec. 304. Damages limitation.
- Sec. 305. Economic losses.
- Sec. 306. Liability of officers and directors.

TITLE IV—CLASS ACTIONS INVOLVING YEAR 2000 CLAIMS

- Sec. 401. Minimum injury requirement.
- Sec. 402. Notification.
- Sec. 403. Dismissal prior to certification.
- Sec. 404. Federal jurisdiction in class actions involving year 2000 claims.

TITLE V—EFFECTIVE DATE

- Sec. 501. Effective date.

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

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

3 (1)(A) Many information technology systems,  
4 devices, and programs 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 those dates represent the year 1900 or there-  
8 after or will fail to process those dates.

1           (B) If not corrected, the problem described in  
2           subparagraph (A) and resulting failures could inca-  
3           pacitate systems that are essential to the functioning  
4           of markets, commerce, consumer products, utilities,  
5           Government, and safety and defense systems, in the  
6           United States and throughout the world.

7           (2) It is in the national interest that producers  
8           and users of technology products concentrate their  
9           attention and resources in the time remaining before  
10          January 1, 2000, on assessing, fixing, testing, and  
11          developing contingency plans to address any and all  
12          outstanding year 2000 computer date-change prob-  
13          lems, so as to minimize possible disruptions associ-  
14          ated with computer failures.

15          (3)(A) Because year 2000 computer date-  
16          change problems may affect virtually all businesses  
17          and other users of technology products to some de-  
18          gree, there is a substantial likelihood that actual or  
19          potential year 2000 failures will prompt a significant  
20          volume of litigation, much of it insubstantial.

21          (B) The litigation described in subparagraph  
22          (A) would have a range of undesirable effects includ-  
23          ing the following:

24                  (i) It would threaten to waste technical  
25                  and financial resources that are better devoted

1 to curing year 2000 computer date-change  
2 problems and ensuring that systems remain or  
3 become operational.

4 (ii) It could threaten the network of valued  
5 and trusted business and customer relationships  
6 that are important to the effective functioning  
7 of the national economy.

8 (iii) It would strain the Nation's legal sys-  
9 tem, causing particular problems for the small  
10 businesses and individuals who already find  
11 that system inaccessible because of its complex-  
12 ity and expense.

13 (iv) The delays, expense, uncertainties, loss  
14 of control, adverse publicity, and animosities  
15 that frequently accompany litigation of business  
16 disputes could exacerbate the difficulties associ-  
17 ated with the date change and work against the  
18 successful resolution of those difficulties.

19 (v) Concern about the potential for liabil-  
20 ity—in particular, concern about the substan-  
21 tial litigation expense associated with defending  
22 against even the most insubstantial lawsuits—  
23 is prompting many persons and businesses with  
24 technical expertise to avoid projects aimed at

1           curing year 2000 computer date-change prob-  
2           lems.

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

6           (1) to establish uniform legal standards that  
7           give all businesses and users of technology products  
8           reasonable incentives to solve year 2000 computer  
9           date-change problems before they develop;

10          (2) to encourage the resolution of year 2000  
11 computer date-change disputes involving economic  
12 damages without recourse to unnecessary, time con-  
13 suming, and wasteful litigation; and

14          (3) to lessen burdens on interstate commerce by  
15 discouraging insubstantial lawsuits, while also pre-  
16 serving the ability of individuals and businesses that  
17 have suffered real injury to obtain complete relief.

18          (c) SCOPE.—Nothing in this Act affects claims for  
19 personal injury.

20 **SEC. 3. DEFINITIONS.**

21        In this Act:

22           (1) ACTUAL DAMAGES.—The term “actual  
23 damages”—

24           (A) means damages for physical injury to  
25           any person or property; and

1 (B) includes the cost of repairing or re-  
2 placing a product that has a material defect.

3 (2) CONTRACT.—The term “contract” means a  
4 contract, tariff, license, or warranty.

5 (3) DEFENDANT.—The term “defendant”  
6 means any person against whom a year 2000 claim  
7 is asserted.

8 (4) ECONOMIC LOSS.—The term “economic  
9 loss”—

10 (A) means any damages other than dam-  
11 ages arising out of personal injury or damage  
12 to tangible property; and

13 (B) includes damages for—

14 (i) lost profits or sales;

15 (ii) business interruption;

16 (iii) losses indirectly suffered as a re-  
17 sult of the defendant’s wrongful act or  
18 omission;

19 (iv) losses that arise because of the  
20 claims of third parties;

21 (v) losses that are required to be  
22 pleaded as special damages; or

23 (vi) items defined as consequential  
24 damages in the Uniform Commercial Code  
25 or an analogous State commercial law.

1 (5) MATERIAL DEFECT.—

2 (A) IN GENERAL.—The term “material de-  
3 fect” means a defect in any item, whether tan-  
4 gible or intangible, or in the provision of a serv-  
5 ice, that substantially prevents the item or serv-  
6 ice from operating or functioning as designed or  
7 intended.

8 (B) EXCLUSIONS.—The term does not in-  
9 clude any defect that—

10 (i) has an insignificant or de minimis  
11 effect on the operation or functioning of an  
12 item;

13 (ii) affects only a component of an  
14 item that, as a whole, substantially oper-  
15 ates or functions as designed; or

16 (iii) has an insignificant or de minimis  
17 effect on the efficacy of the service pro-  
18 vided.

19 (6) PERSON.—The term “person” means any  
20 natural person and any entity, organization, or en-  
21 terprise, including any corporation, company (includ-  
22 ing any joint stock company), association, partner-  
23 ship, trust, or governmental entity.

24 (7) PERSONAL INJURY.—

1 (A) IN GENERAL.—The term “personal in-  
2 jury” means any physical injury to a natural  
3 person, including death of the person.

4 (B) EXCLUSIONS.—The term does not in-  
5 clude mental suffering, emotional distress, or  
6 like elements of injury that do not constitute  
7 physical harm to a natural person.

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

10 (9) PUNITIVE DAMAGES.—The term “punitive  
11 damages” means damages, other than compensatory  
12 damages, that, in whole or in part, are awarded  
13 against any person—

14 (A) to punish that person; or

15 (B) to deter that person, or other persons,  
16 from engaging in similar behavior.

17 (10) STATE.—The term “State” means any  
18 State of the United States, the District of Columbia,  
19 the Commonwealth of Puerto Rico, the Northern  
20 Mariana Islands, the U.S. Virgin Islands, Guam,  
21 American Samoa, and any other territory or posses-  
22 sion of the United States, and any political subdivi-  
23 sion thereof.

24 (11) YEAR 2000 CIVIL ACTION.—The term “year  
25 2000 civil action” means any civil action of any kind

1 brought in any court under Federal, State, or for-  
2 eign law, in which—

3 (A) a year 2000 claim is asserted; or

4 (B) any claim or defense is related, di-  
5 rectly or indirectly, to an actual or potential  
6 year 2000 failure.

7 (12) YEAR 2000 CLAIM.—The term “year 2000  
8 claim” means any claim or cause of action of any  
9 kind, whether asserted by way of claim, counter-  
10 claim, cross-claim, third-party claim, or otherwise, in  
11 which the plaintiff’s alleged loss or harm resulted,  
12 directly or indirectly, from an actual or potential  
13 year 2000 failure.

14 (13) YEAR 2000 FAILURE.—The term “year  
15 2000 failure” means any failure by any device or  
16 system (including any computer system and any  
17 microchip or integrated circuit embedded in another  
18 device or product), or any software, firmware, or  
19 other set or collection of processing instructions,  
20 however constructed, in processing, calculating, com-  
21 paring, sequencing, displaying, storing, transmitting,  
22 or receiving date-related data, including—

23 (A) the failure to accurately administer or  
24 account for transitions or comparisons from,

1 into, and between the 20th and 21st centuries,  
 2 and between 1999 and 2000; or

3 (B) the failure to recognize or accurately  
 4 process any specific date, and the failure accu-  
 5 rately to account for the status of the year  
 6 2000 as a leap year.

7 **TITLE I—PRELITIGATION PRO-**  
 8 **CEDURES FOR YEAR 2000**  
 9 **CIVIL ACTIONS**

10 **SEC. 101. PRE-TRIAL NOTICE.**

11 (a) NOTIFICATION PERIOD.—

12 (1) IN GENERAL.—Before filing a year 2000  
 13 claim, except an action for a claim that seeks only  
 14 injunctive relief, a prospective plaintiff shall be re-  
 15 quired to provide to each prospective defendant a  
 16 written notice that identifies and describes with  
 17 particularity—

18 (A) any manifestation of a material defect  
 19 alleged to have caused injury;

20 (B) the injury allegedly suffered or reason-  
 21 ably risked by the prospective plaintiff; and

22 (C) the relief or action sought by the pro-  
 23 spective plaintiff.

24 (2) COMMENCEMENT OF ACTION.—Except as  
 25 provided in subsections (c) and (e), a prospective

1 plaintiff shall not file a year 2000 claim in Federal  
2 or State court until the expiration of the 90-day pe-  
3 riod beginning on the date on which the prospective  
4 plaintiff provides notice under paragraph (1).

5 (b) RESPONSE TO NOTICE.—Not later than 30 days  
6 after receipt of the notice specified in subsection (a), each  
7 prospective defendant shall provide each prospective plain-  
8 tiff a written statement that—

9 (1) acknowledges receipt of the notice; and

10 (2) describes any actions that the defendant will  
11 take, or has taken, to address the defect or injury  
12 identified by the prospective plaintiff in the notice.

13 (c) FAILURE TO RESPOND.—If a prospective defend-  
14 ant fails to respond to a notice provided under subsection  
15 (a)(1) during the 30-day period prescribed in subsection  
16 (b) or does not include in the response a description of  
17 actions referred to in subsection (b)(2)—

18 (1) the 90-day waiting period identified in sub-  
19 section (a) shall terminate at the expiration of the  
20 30-day period specified in subsection (b) with re-  
21 spect to that prospective defendant; and

22 (2) the prospective plaintiff may commence a  
23 year 2000 civil action against such prospective de-  
24 fendant immediately upon the termination of that  
25 waiting period.

1 (d) FAILURE TO PROVIDE NOTICE.—

2 (1) IN GENERAL.—Subject to subsections (c)  
3 and (e), a defendant may treat a complaint filed by  
4 the plaintiff as a notice required under subsection  
5 (a) by so informing the court and the plaintiff if the  
6 defendant determines that a plaintiff has com-  
7 menced a year 2000 civil action—

8 (A) without providing the notice specified  
9 in subsection (a); or

10 (B) before the expiration of the 90-day  
11 waiting period specified in subsection (a).

12 (2) STAY.—If a defendant elects under para-  
13 graph (1) to treat a complaint as a notice—

14 (A) the court shall stay all discovery and  
15 other proceedings in the action for a period of  
16 90 days beginning on the date of filing of the  
17 complaint; and

18 (B) the time for filing answers and all  
19 other pleadings shall be tolled during this 90-  
20 day period.

21 (e) EFFECT OF CONTRACTUAL WAITING PERIODS.—

22 In any case in which a contract requires notice of non-  
23 performance and provides for a period of delay before the  
24 initiation of suit for breach or repudiation of contract, the

1 contractual period of delay controls and shall apply in lieu  
2 of the waiting period specified in subsections (a) and (d).

3 (f) SANCTION FOR FRIVOLOUS INVOCATION OF THE  
4 STAY PROVISION.—If a defendant acts under subsection  
5 (d) to stay an action, and the court subsequently finds  
6 that the assertion by the defendant that the action is a  
7 year 2000 civil action was frivolous and made for the pur-  
8 pose of causing unnecessary delay, the court may impose  
9 a sanction, including an order to make payments to oppos-  
10 ing parties in accordance with Rule 11 of the Federal  
11 Rules of Civil Procedure.

12 (g) COMPUTATION OF TIME.—For purposes of this  
13 section, the rules regarding computation of time shall be  
14 governed by the applicable Federal or State rules of civil  
15 procedure.

16 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION.**

17 (a) REQUESTS MADE DURING NOTIFICATION PE-  
18 RIOD.—At any time during the 90-day notification period  
19 under section 101(a), either party may request the other  
20 party to use alternative dispute resolution. If, based upon  
21 that request, the parties enter into an agreement to use  
22 alternative dispute resolution, the parties may also agree  
23 to an extension of that 90-day period.

24 (b) REQUEST MADE AFTER NOTIFICATION PE-  
25 RIOD.—At any time after expiration of the 90-day notifi-

1 cation period under section 101(a), whether before or after  
2 the filing of a complaint, either party may request the  
3 other party to use alternative dispute resolution.

4 (c) PAYMENT DATE.—If a dispute that is the subject  
5 of the complaint or responsive pleading is resolved through  
6 alternative dispute resolution as provided in subsection (a)  
7 or (b), the defendant shall pay any amount of funds that  
8 the defendant is required to pay the plaintiff under the  
9 settlement not later than 30 days after the date on which  
10 the parties settle the dispute, and all other terms shall  
11 be implemented as promptly as possible based upon the  
12 agreement of the parties, unless another period of time  
13 is agreed to by the parties or established by contract be-  
14 tween the parties.

15 **SEC. 103. PLEADING REQUIREMENTS.**

16 (a) NATURE AND AMOUNT OF DAMAGES.—In any  
17 year 2000 civil action in which a plaintiff seeks an award  
18 of money damages, the complaint shall state with particu-  
19 larity with regard to each year 2000 claim—

20 (1) the nature and amount of each element of  
21 damages; and

22 (2) the factual basis for the calculation of the  
23 damages.

24 (b) MATERIAL DEFECTS.—In any year 2000 civil ac-  
25 tion in which the plaintiff alleges that a product or service

1 was defective, the complaint shall, with respect to each  
2 year 2000 claim—

3 (1) identify with particularity the manifesta-  
4 tions of the material defects; and

5 (2) state with particularity the facts supporting  
6 the conclusion that the defects were material.

7 (c) REQUIRED STATE OF MIND.—In any year 2000  
8 civil action in which a year 2000 claim is asserted with  
9 respect to which the plaintiff may prevail only on proof  
10 that the defendant acted with a particular state of mind,  
11 the complaint shall, with respect to each element of the  
12 claim, state in detail the facts giving rise to a strong infer-  
13 ence that the defendant acted with the required state of  
14 mind.

15 (d) MOTION TO DISMISS; STAY OF DISCOVERY.—

16 (1) DISMISSAL FOR FAILURE TO MEET PLEAD-  
17 ING REQUIREMENTS.—In any year 2000 civil action,  
18 the court shall, on the motion of any defendant, dis-  
19 miss without prejudice any year 2000 claim asserted  
20 in the complaint if any of the requirements under  
21 subsection (a), (b), or (c) is not met with respect to  
22 the claim.

23 (2) STAY OF DISCOVERY.—In any year 2000  
24 civil action, all discovery and other proceedings shall  
25 be stayed during the pendency of any motion to dis-

1 miss, unless the court finds upon the motion of any  
2 party that particularized discovery is necessary to  
3 preserve evidence or prevent undue prejudice to that  
4 party.

5 (3) PRESERVATION OF EVIDENCE.—

6 (A) IN GENERAL.—

7 (i) TREATMENT OF EVIDENCE.—Dur-  
8 ing the pendency of any stay of discovery  
9 entered under this paragraph, unless oth-  
10 erwise ordered by the court, any party to  
11 the action with actual notice of the allega-  
12 tions contained in the complaint shall treat  
13 the items described in clause (ii) as if they  
14 were a subject of a continuing request for  
15 production of documents from an opposing  
16 party under applicable Federal or State  
17 rules of civil procedure.

18 (ii) ITEMS.—The items described in  
19 this clause are all documents, data com-  
20 pilations (including electronically stored or  
21 recorded data), and tangible objects that—

22 (I) are in the custody or control  
23 of the party described in clause (i);  
24 and

25 (II) relevant to the allegations.

1                   (B) SANCTION FOR WILLFUL VIOLA-  
2                   TION.—A party aggrieved by the willful failure  
3                   of an opposing party to comply with clause (A)  
4                   may apply to the court for an order awarding  
5                   appropriate sanctions.

6 **SEC. 104. DUTY TO MITIGATE.**

7           (a) IN GENERAL.—There shall be no recovery for any  
8 year 2000 claim on account of injury that the plaintiff  
9 could reasonably have avoided in light of any disclosure  
10 or other information with respect to which the plaintiff  
11 was, or reasonably could have been, aware.

12           (b) DAMAGES.—The damages awarded for any claim  
13 described in subsection (a) shall exclude any amount that  
14 the plaintiff reasonably could have avoided in light of any  
15 disclosure or information described in that subsection.

16 **TITLE II—YEAR 2000 CIVIL AC-**  
17 **TIONS INVOLVING CON-**  
18 **TRACTS**

19 **SEC. 201. CONTRACT PRESERVATION.**

20           (a) IN GENERAL.—Subject to subsections (b) and (c),  
21 notwithstanding any other provision of Federal or State  
22 statutory or case law, in any action in which a year 2000  
23 claim is advanced, in resolving that claim all written con-  
24 tractual terms, including limitations or exclusions of liabil-  
25 ity or disclaimers of warranty, shall be fully enforceable.

1 (b) INTERPRETATION OF CONTRACT.—In any case in  
2 which a contract is silent as to a particular issue, the in-  
3 terpretation of the contract as to that issue shall be deter-  
4 mined by applicable law in effect at the time that the con-  
5 tract was entered into.

6 (c) UNENFORCEABLE CONTRACTS.—Subsection (a)  
7 does not apply in any case in which a court determines  
8 that the contract as a whole is unenforceable due to an  
9 infirmity in the formation of the contract under applicable  
10 law in effect at the time the contract was entered into.

11 **SEC. 202. EVIDENCE OF REASONABLE EFFORTS AND DE-**  
12 **FENSES.**

13 (a) REASONABLE EFFORTS.—In any action in which  
14 a year 2000 claim is advanced and in which a breach of  
15 contract or related claim is alleged, in the resolution of  
16 that claim, in addition to any other rights provided by ap-  
17 plicable law, the party against whom the claim of breach  
18 is asserted shall be allowed, for the purpose of limiting  
19 or eliminating the defendant's liability, to offer evidence  
20 that the implementation of the contract by that party, or  
21 the efforts made by that party to implement the contract,  
22 were reasonable in light of the circumstances.

23 (b) IMPOSSIBILITY OR COMMERCIAL IMPRACTICABIL-  
24 ITY.—

1           (1) IN GENERAL.—In any action in which a  
2           year 2000 claim is advanced and in which a breach  
3           of contract or related claim is alleged, in resolving  
4           that claim applicability of the doctrines of impos-  
5           sibility and commercial impracticability shall be de-  
6           termined by applicable law in existence on January  
7           1, 1999.

8           (2) RULE OF CONSTRUCTION.—Nothing in this  
9           Act shall be construed as limiting or impairing a  
10          party’s right to assert defenses based upon the doc-  
11          trines referred to in paragraph (1).

12 **SEC. 203. DAMAGES LIMITATION.**

13          In any action in which a year 2000 claim is advanced  
14          and that involves a breach of contract, warranty, or relat-  
15          ed claim, in resolving that claim the court shall not award  
16          any damages—

17               (1) unless those damages are provided for by  
18               the express terms of the contract; or

19               (2) if the contract is silent on those damages,  
20               by operation of the applicable Federal or State law  
21               that governed interpretation of the contract at the  
22               time the contract was entered into.

1 **TITLE III—YEAR 2000 CIVIL AC-**  
2 **TIONS INVOLVING TORT AND**  
3 **OTHER NONCONTRACTUAL**  
4 **CLAIMS**

5 **SEC. 301. PROPORTIONATE LIABILITY.**

6 (a) IN GENERAL.—Except in cases involving personal  
7 injury, a person against whom a final judgment is entered  
8 on a year 2000 claim shall be liable solely for the portion  
9 of the judgment that corresponds to the percentage of re-  
10 sponsibility of that person, as determined under subsection  
11 (b).

12 (b) DETERMINATION OF RESPONSIBILITY.—

13 (1) IN GENERAL.—As to any year 2000 claim,  
14 the court shall instruct the jury to answer special in-  
15 terrogatories, or if there is no jury, make findings,  
16 with respect to each defendant and plaintiff, and  
17 each of the other persons claimed by any of the par-  
18 ties to have caused or contributed to the loss in-  
19 curred by the plaintiff, including persons who have  
20 entered into settlements with the plaintiff or plain-  
21 tiffs, concerning the percentage of responsibility of  
22 that person, measured as a percentage of the total  
23 fault of all persons who caused or contributed to the  
24 total loss incurred by the plaintiff.

1           (2) CONTENTS OF SPECIAL INTERROGATORIES  
2           OR FINDINGS.—The responses to interrogatories, or  
3           findings, as appropriate, under paragraph (1) shall  
4           specify—

5                   (A) the total amount of damages that the  
6           plaintiff is entitled to recover; and

7                   (B) the percentage of responsibility of each  
8           person found to have caused or contributed to  
9           the loss incurred by the plaintiff or plaintiffs.

10          (3) FACTORS FOR CONSIDERATION.—In deter-  
11         mining the percentage of responsibility under this  
12         paragraph, the trier of fact shall consider—

13                   (A) the nature of the conduct of each per-  
14         son alleged to have caused or contributed to the  
15         loss incurred by the plaintiff; and

16                   (B) the nature and extent of the causal re-  
17         lationship between the conduct of each such  
18         person and the damages incurred by the plain-  
19         tiff or plaintiffs.

20          (4) NONDISCLOSURE TO JURY.—The standard  
21         for allocation of damages under paragraph (1) shall  
22         not be disclosed to members of the jury.

23 **SEC. 302. STATE OF MIND AND FORESEEABILITY.**

24          (a) DEFENDANT'S STATE OF MIND AS TO YEAR 2000  
25         FAILURE.—With respect to any year 2000 claim for

1 money damages in which the defendant's actual or con-  
2 structive awareness of an actual or potential year 2000  
3 failure is an element of the claim under applicable law,  
4 the defendant shall not be liable unless the plaintiff, in  
5 addition to establishing all other requisite elements of the  
6 claim, proves by clear and convincing evidence that the  
7 defendant actually knew, or recklessly disregarded a  
8 known and substantial risk, that the failure would occur.

9 (b) INJURY TO PLAINTIFF.—With respect to any year  
10 2000 claim for money damages in which the defendant's  
11 actual or constructive awareness of actual or potential  
12 harm to plaintiff is greater than the standard for neg-  
13 ligence in subsection (c) and is an element of the claim  
14 under applicable law, the defendant shall not be liable un-  
15 less the plaintiff, in addition to establishing all other req-  
16 uisite elements of the claim, proves by clear and convinc-  
17 ing evidence that the defendant actually knew, or reck-  
18 lessly disregarded a known and substantial risk, that  
19 plaintiff would suffer that harm.

20 (c) NEGLIGENCE.—With respect to any year 2000  
21 claim for money damages, the defendant shall not be liable  
22 unless the plaintiff establishes by clear and convincing evi-  
23 dence, in addition to all other requisite elements of the  
24 claim, that the defendant knew or should have known that

1 the actions of the defendant created an unreasonable risk  
2 of harm to the plaintiff.

3 (d) PRESERVATION OF EXISTING LAW.—Nothing in  
4 subsection (a), (b), or (c) shall be deemed to create any  
5 year 2000 claim or to relieve the plaintiff in any year 2000  
6 civil action of the obligation of that plaintiff to establish  
7 any element of the cause of action of that plaintiff under  
8 applicable law.

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

10 Except for breach or repudiation of contract claims,  
11 as to any year 2000 claim seeking money damages—

12 (1) the fact that a year 2000 failure occurred  
13 in an entity, facility, system, product, or component  
14 that was within the control of the party against  
15 whom the claim is asserted shall not constitute the  
16 sole basis for recovery; and

17 (2) the party against whom the claim is as-  
18 serted shall be entitled to establish, as a complete  
19 defense to the claim, that the party took measures  
20 that were reasonable under the circumstances to pre-  
21 vent the year 2000 failure from occurring or from  
22 causing the damages upon which the claim is based.

23 **SEC. 304. DAMAGES LIMITATION.**

24 (a) IN GENERAL.—As to any year 2000 claim in  
25 which punitive damages may be awarded under applicable

1 law and in which a defendant is found liable for punitive  
2 damages, the amount of punitive damages that may be  
3 awarded to a claimant shall not exceed the greater of—

4 (1) 3 times the amount awarded to the claimant  
5 for actual damages; or

6 (2) \$250,000.

7 (b) SPECIAL RULE.—

8 (1) RULE.—

9 (A) IN GENERAL.—Notwithstanding sub-  
10 section (a), as to any year 2000 claim in which  
11 the defendant is found liable for punitive dam-  
12 ages and the defendant is an individual de-  
13 scribed in subparagraph (B), the amount of pu-  
14 nitive damages shall not exceed the lesser of—

15 (i) 3 times the amount awarded to the  
16 claimant for actual damages; or

17 (ii) \$250,000.

18 (B) DESCRIPTION OF INDIVIDUAL.—An in-  
19 dividual described in this clause is an individual  
20 whose net worth does not exceed \$500,000, is  
21 an owner of an unincorporated business that  
22 has fewer than 25 full-time employees, or is any  
23 partnership, corporation, association, unit of  
24 local government, or organization that has  
25 fewer than 25 full-time employees.

1           (2) APPLICABILITY.—For purposes of determin-  
2           ing the applicability of this subsection to a corpora-  
3           tion, the number of employees of a subsidiary of a  
4           wholly owned corporation shall include all employees  
5           of a parent corporation or any subsidiary of that  
6           parent corporation.

7           (c) APPLICATION OF LIMITATIONS BY THE COURT.—  
8           The limitations contained in subsection (a) or (b) shall be  
9           applied by the court and shall not be disclosed to the jury.

10 **SEC. 305. ECONOMIC LOSSES.**

11           (a) IN GENERAL.—Subject to subsection (b), a party  
12           to a year 2000 civil action may not recover economic losses  
13           for a year 2000 claim based on tort unless the party is  
14           able to show that at least one of the following cir-  
15           cumstances exists:

16           (1) The recovery of these losses is provided for  
17           in the contract to which the party seeking to recover  
18           such losses is a party.

19           (2) If the contract is silent on those losses, and  
20           the application of the applicable Federal or State  
21           law that governed interpretation of the contract at  
22           the time the contract was entered into would allow  
23           recovery of such losses.

1           (3) These losses are incidental to a claim in the  
2           year 2000 civil action based on personal injury  
3           caused by a year 2000 failure.

4           (4) These losses are incidental to a claim in the  
5           year 2000 civil action based on damage to tangible  
6           property caused by a year 2000 failure.

7           (b) TREATMENT OF ECONOMIC LOSSES.—Economic  
8           losses shall be recoverable in a year 2000 civil action only  
9           if applicable Federal law, or applicable State law embodied  
10          in statute or controlling judicial precedent as of January  
11          1, 1999, permits the recovery of such losses in the action.

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

13          (a) IN GENERAL.—A director, officer, or trustee of  
14          a business or other organization (including a corporation,  
15          unincorporated association, partnership, or non-profit or-  
16          ganization) shall not be personally liable as to any year  
17          2000 claim in the capacity of that individual as a director  
18          or officer of the business or organization for an aggregate  
19          amount greater than the greater of—

20                  (1) \$100,000; or

21                  (2) the amount of cash compensation received  
22          by the director or officer from the business or orga-  
23          nization during the 12-month period immediately  
24          preceding the act or omission for which liability was  
25          imposed.

1 (b) EXCEPTION.—The limitation in subsection (a)  
 2 shall not apply to any claim in which it is found by clear  
 3 and convincing evidence that the director or officer, with  
 4 specific intent to cause harm to the plaintiff—

5 (1) intentionally made materially misleading  
 6 statements relied upon by the plaintiff regarding any  
 7 actual or potential year 2000 problem; or

8 (2) intentionally withheld material information  
 9 regarding any actual or potential year 2000 problem  
 10 of the business or organization that the director or  
 11 officer had a duty to disclose.

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

19 **TITLE IV—CLASS ACTIONS**  
 20 **INVOLVING YEAR 2000 CLAIMS**

21 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

22 (a) IN GENERAL.—In any action involving a year  
 23 2000 claim that a product or service is defective, the ac-  
 24 tion may be maintained as a class action in Federal or  
 25 State court with respect to that claim only if—

1 (1) the claim satisfies all other prerequisites es-  
2 tablished by applicable Federal or State law; and

3 (2) the court finds that the alleged defect in the  
4 product or service was a material defect with respect  
5 to a majority of the members of the class.

6 (b) DETERMINATION BY COURT.—

7 (1) IN GENERAL.—As soon as practicable after  
8 the commencement of an action involving a year  
9 2000 claim that a product or service is defective and  
10 that is brought as a class action, the court shall de-  
11 termine by order whether the requirement stated in  
12 paragraph (1) is satisfied.

13 (2) ORDERS.—An order under this subsection  
14 may be—

15 (A) conditional; and

16 (B) altered or amended before the decision  
17 on the merits.

18 **SEC. 402. NOTIFICATION.**

19 (a) NOTICE BY MAIL.—

20 (1) IN GENERAL.—In any year 2000 civil action  
21 that is maintained as a class action, the court, in ad-  
22 dition to any other notice required by applicable  
23 Federal or State law, shall direct notice of the action  
24 to each member of the class by United States mail,  
25 return receipt requested.

1           (2) EXCLUSION OF CERTAIN PERSONS.—Any  
2 person whose actual receipt of the notice is not veri-  
3 fied by the court or by counsel for 1 of the parties  
4 shall be excluded from the class unless that person  
5 informs the court in writing, on a date no later than  
6 the commencement of trial or entry of judgment,  
7 that the person wishes to join the class.

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

11           (1) concisely and clearly describe the nature of  
12 the action;

13           (2) identify the jurisdiction whose law will gov-  
14 ern the action;

15           (3) identify any potential claims that class  
16 counsel chose not to pursue so that the action would  
17 satisfy class certification requirements; and

18           (4) describe the fee arrangement of class coun-  
19 sel.

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

21 Before determining whether to certify a class in a  
22 year 2000 civil action, the court may decide a motion to  
23 dismiss or for summary judgment made by any party if  
24 the court concludes that decision will—

1 (1) promote the fair and efficient adjudication  
2 of the controversy; and

3 (2) not cause undue delay.

4 **SEC. 404. FEDERAL JURISDICTION IN CLASS ACTIONS IN-**  
5 **VOLVING YEAR 2000 CLAIMS.**

6 (a) DIVERSITY JURISDICTION.—Section 1332 of title  
7 28, United States Code, is amended—

8 (1) by redesignating subsections (b), (c), and  
9 (d) as subsections (c), (d), and (e), respectively; and

10 (2) by inserting after subsection (a) the follow-  
11 ing:

12 “(b)(1)(A) The district courts shall, regardless of the  
13 sum or value of the matter in controversy therein, have  
14 original jurisdiction of any year 2000 civil action which  
15 is brought as a class action and in which—

16 “(i) any member of a proposed plaintiff class is  
17 a citizen of a State different from any defendant;

18 “(ii) any member of a proposed plaintiff class  
19 is a foreign state or a citizen or subject of a foreign  
20 state and any defendant is a citizen of a State; or

21 “(iii) any member of a proposed plaintiff class  
22 is a citizen of a State and any defendant is a citizen  
23 or subject of a foreign state.

24 “(B) As used in this paragraph, the term ‘foreign  
25 state’ has the meaning given that term in section 1603(a).

1       “(2)(A) The district court may, in its discretion, ab-  
2 stain from hearing such action in a year 2000 civil action  
3 described in paragraph (1) in which—

4           “(i) the substantial majority of the members of  
5 all proposed plaintiff classes are citizens of a single  
6 State of which the primary defendants are also citi-  
7 zens; and

8           “(ii) the claims asserted will be governed pri-  
9 marily by the laws of that State, the district court  
10 should abstain from hearing such action.

11       “(B) The district court may, in its discretion, abstain  
12 from hearing such action in a year 2000 civil action de-  
13 scribed in paragraph (1) in which—

14           “(i) all matters in controversy asserted by the  
15 individual members of all proposed plaintiff classes  
16 in the aggregate do not exceed the sum or value of  
17 \$1,000,000, exclusive of interest and costs;

18           “(ii) the number of members of all proposed  
19 plaintiff classes in the aggregate is less than 100; or

20           “(iii) the primary defendants are States, State  
21 officials, or other governmental entities against  
22 whom the district court may be foreclosed from or-  
23 dering relief, the district court may, in its discretion,  
24 abstain from hearing such action.

1       “(3)(A) Paragraph (1) and section 1453 shall not  
2 apply to any class action that is brought under the Securi-  
3 ties Act of 1933 (15 U.S.C. 77a et seq.).

4       “(B) Paragraph (1) and section 1453 shall not apply  
5 to a class action described in subparagraph (C) that is  
6 based upon the statutory or common law of the State in  
7 which the issuer concerned is incorporated (in the case of  
8 a corporation) or organized (in the case of any other en-  
9 tity).

10       “(C) A class action is described in this subparagraph  
11 if it involves—

12               “(i) the purchase or sale of securities by an  
13 issuer or an affiliate of an issuer exclusively from or  
14 to holders of equity securities of the issuer; or

15               “(ii) any recommendation, position, or other  
16 communication with respect to the sale of securities  
17 of an issuer that—

18                       “(I) is made by or on behalf of the issuer  
19 or an affiliate of the issuer to holders of equity  
20 securities of the issuer; and

21                       “(II) concerns decisions of those equity  
22 holders with respect to voting their securities,  
23 acting in response to a tender or exchange  
24 offer, or exercising dissenters’ or appraisal  
25 rights.

1 “(D) As used in this paragraph, the terms ‘issuer’,  
2 ‘security’, and ‘equity security’ have the meanings given  
3 those terms in section 3 of the Securities Exchange Act  
4 of 1934 (15 U.S.C. 78e).”.

5 (b) CONFORMING AMENDMENT.—Section 1332(c) of  
6 title 281 United States Code, (as redesignated by this sec-  
7 tion) is amended by inserting after “pursuant to sub-  
8 section (a)” after “Federal courts”.

9 (c) DETERMINATION OF DIVERSITY.—Section 1332,  
10 as amended by this section, is further amended by adding  
11 at the end the following:

12 “(f) For purposes of subsection (b), a member of a  
13 proposed class shall be deemed to be a citizen of a State  
14 different from a defendant corporation only if that mem-  
15 ber is a citizen of a State different from all States of which  
16 the defendant corporation is deemed a citizen.”.

17 (d) REMOVAL OF CLASS ACTIONS.—Chapter 89 of  
18 title 28, United States Code is amended by adding at the  
19 end the following:

20 **“§ 1453. Removal of class actions**

21 “(a) IN GENERAL.—A year 2000 civil action that is  
22 brought as a class action may be removed to a district  
23 court of the United States in accordance with this chapter,  
24 except that such action may be removed—

1           “(1) by any defendant without the consent of  
2 all defendants; or

3           “(2) by any plaintiff class member who is not  
4 a named or representative class member of the ac-  
5 tion for which removal is sought, without the con-  
6 sent of all members of such class.

7           “(b) WHEN REMOVABLE.—This section shall apply  
8 to any year 2000 civil action that is brought as a class  
9 action before or after the entry of any order certifying a  
10 class.

11          “(c) PROCEDURE FOR REMOVAL.—

12           “(1) IN GENERAL.—The provisions of section  
13 1446(a) relating to a defendant removing a case  
14 shall apply to a plaintiff removing a case under this  
15 section.

16           “(2) APPLICATION.—With respect to the appli-  
17 cation of section 1446(b), the requirement relating  
18 to the 30-day filing period shall be met if a plaintiff  
19 class member who is not a named or representative  
20 class member of the action for which removal is  
21 sought files notice of removal within 30 days after  
22 receipt by such class member, through service or  
23 otherwise, of the initial written notice of the class  
24 action provided at the trial court’s direction.”.

1 (e) REMOVAL LIMITATIONS.—Section 1446(b) is  
2 amended in the second undesignated paragraph—

3 (1) by inserting “, by exercising due diligence,”  
4 after “ascertained”; and

5 (2) by striking “section 1332” and inserting  
6 “section”.

7 (f) TECHNICAL AND CONFORMING AMENDMENTS.—  
8 The table of sections for chapter 89 of title 28, United  
9 States Code, is amended by adding after the item relating  
10 to section 1452 the following:

“1453. Removal of class actions.”.

11 (g) PROCEDURE AFTER REMOVAL.—Section 1447 of  
12 title 28, United States Code, is amended by adding at the  
13 end the following:

14 “(f)(1) If, after removal, the court determines that  
15 no aspect of an action that is subject to its jurisdiction  
16 solely under the provisions of section 1332(b) may be  
17 maintained as a class action under Rule 23 of the Federal  
18 Rules of Civil Procedure, the court shall strike the class  
19 allegations from the action and remand the action to the  
20 State court.

21 “(2) Upon remand of the action, the period of limita-  
22 tions for any claim that was asserted in the action on be-  
23 half of any named or unnamed member of any proposed  
24 class shall be deemed tolled to the full extent provided  
25 under Federal law.”.

1 (h) APPLICATION OF SUBSTANTIVE STATE LAW.—  
2 Nothing in the amendments made by this section shall  
3 alter the substantive law applicable to an action to which  
4 such amendments apply.

5 **TITLE V—EFFECTIVE DATE**

6 **SEC. 501. EFFECTIVE DATE.**

7 This Act and the amendments made by this Act shall  
8 take effect on January 1, 1999.

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