

Calendar No. 82

106TH CONGRESS
1ST Session

S. 461

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.

MARCH 26, 1999

Reported with an amendment

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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

MARCH 26, 1999

Reported under authority of the order of the Senate of March 25, 1999, by
Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

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

4 (b) **TABLE OF CONTENTS.**—The table of contents for
 5 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.

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

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

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

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

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

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

1 (B) The litigation described in subparagraph
2 (A) would have a range of undesirable effects includ-
3 ing the following:

4 (i) It would threaten to waste technical
5 and financial resources that are better devoted
6 to curing year 2000 computer date-change
7 problems and ensuring that systems remain or
8 become operational.

9 (ii) It could threaten the network of valued
10 and trusted business and customer relationships
11 that are important to the effective functioning
12 of the national economy.

13 (iii) It would strain the Nation's legal sys-
14 tem, causing particular problems for the small
15 businesses and individuals who already find
16 that system inaccessible because of its com-
17 plexity and expense.

18 (iv) The delays, expense, uncertainties, loss
19 of control, adverse publicity, and animosities
20 that frequently accompany litigation of business
21 disputes could exacerbate the difficulties associ-
22 ated with the date change and work against the
23 successful resolution of those difficulties.

24 (v) Concern about the potential for liabil-
25 ity—in particular, concern about the substan-

1 tial litigation expense associated with defending
 2 against even the most insubstantial lawsuits—
 3 is prompting many persons and businesses with
 4 technical expertise to avoid projects aimed at
 5 curing year 2000 computer date-change prob-
 6 lems.

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

10 (1) to establish uniform legal standards that
 11 give all businesses and users of technology products
 12 reasonable incentives to solve year 2000 computer
 13 date-change problems before they develop;

14 (2) to encourage the resolution of year 2000
 15 computer date-change disputes involving economic
 16 damages without recourse to unnecessary, time con-
 17 suming, and wasteful litigation; and

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

22 (c) SCOPE.—Nothing in this Act affects claims for
 23 personal injury.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

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

3 (A) means damages for physical injury to
4 any person or property; and

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

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

9 (3) DEFENDANT.—The term “defendant”
10 means any person against whom a year 2000 claim
11 is asserted.

12 (4) ECONOMIC LOSS.—The term “economic
13 loss”—

14 (A) means any damages other than dam-
15 ages arising out of personal injury or damage
16 to tangible property; and

17 (B) includes damages for—

18 (i) lost profits or sales;

19 (ii) business interruption;

20 (iii) losses indirectly suffered as a re-
21 sult of the defendant’s wrongful act or
22 omission;

23 (iv) losses that arise because of the
24 claims of third parties;

1 (v) losses that are required to be
2 pleaded as special damages; or

3 (vi) items defined as consequential
4 damages in the Uniform Commercial Code
5 or an analogous State commercial law.

6 ~~(5) MATERIAL DEFECT.—~~

7 ~~(A) IN GENERAL.—~~The term “material de-
8 fect” means a defect in any item, whether tan-
9 gible or intangible, or in the provision of a serv-
10 ice, that substantially prevents the item or serv-
11 ice from operating or functioning as designed or
12 intended.

13 ~~(B) EXCLUSIONS.—~~The term does not in-
14 clude any defect that—

15 (i) has an insignificant or de minimis
16 effect on the operation or functioning of an
17 item;

18 (ii) affects only a component of an
19 item that, as a whole, substantially oper-
20 ates or functions as designed; or

21 (iii) has an insignificant or de minimis
22 effect on the efficacy of the service pro-
23 vided.

24 ~~(6) PERSON.—~~The term “person” means any
25 natural person and any entity, organization, or en-

terprise, including any corporation, company (including any joint stock company), association, partnership, trust, or governmental entity.

(7) PERSONAL INJURY.—

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

(B) EXCLUSIONS.—The term does not include mental suffering, emotional distress, or like elements of injury that do not constitute physical harm to a natural person.

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

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

(A) to punish that person; or

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

(10) STATE.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, Guam, American Samoa, and any other territory or posses-

1 sion of the United States, and any political subdivi-
 2 sion thereof.

3 ~~(11) YEAR 2000 CIVIL ACTION.~~—The term “year
 4 2000 civil action” means any civil action of any kind
 5 brought in any court under Federal, State, or for-
 6 eign law, in which—

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

8 (B) any claim or defense is related, di-
 9 rectly or indirectly, to an actual or potential
 10 year 2000 failure.

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

18 ~~(13) YEAR 2000 FAILURE.~~—The term “year
 19 2000 failure” means any failure by any device or
 20 system (including any computer system and any
 21 microchip or integrated circuit embedded in another
 22 device or product), or any software, firmware, or
 23 other set or collection of processing instructions,
 24 however constructed, in processing, calculating, com-

paring, sequencing, displaying, storing, transmitting,
or receiving date-related data, including—

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

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

TITLE I—PRELITIGATION PRO- CEDURES FOR YEAR 2000 CIVIL ACTIONS

SEC. 101. PRE-TRIAL NOTICE.

(a) NOTIFICATION PERIOD.—

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

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

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

1 (C) the relief or action sought by the pro-
 2 spective plaintiff.

3 ~~(2) COMMENCEMENT OF ACTION.—Except as~~
 4 provided in subsections (c) and (e), a prospective
 5 plaintiff shall not file a year 2000 claim in Federal
 6 or State court until the expiration of the 90-day pe-
 7 riod beginning on the date on which the prospective
 8 plaintiff provides notice under paragraph (1).

9 ~~(b) RESPONSE TO NOTICE.—Not later than 30 days~~
 10 after receipt of the notice specified in subsection (a), each
 11 prospective defendant shall provide each prospective plain-
 12 tiff a written statement that—

13 (1) acknowledges receipt of the notice; and

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

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

22 (1) the 90-day waiting period identified in sub-
 23 section (a) shall terminate at the expiration of the
 24 30-day period specified in subsection (b) with re-
 25 spect to that prospective defendant; and

1 (2) the prospective plaintiff may commence a
 2 year 2000 civil action against such prospective de-
 3 fendant immediately upon the termination of that
 4 waiting period.

5 (d) FAILURE TO PROVIDE NOTICE.—

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

12 (A) without providing the notice specified
 13 in subsection (a); or

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

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

18 (A) the court shall stay all discovery and
 19 other proceedings in the action for a period of
 20 90 days beginning on the date of filing of the
 21 complaint; and

22 (B) the time for filing answers and all
 23 other pleadings shall be tolled during this 90-
 24 day period.

1 (e) ~~EFFECT OF CONTRACTUAL WAITING PERIODS.—~~

2 In any case in which a contract requires notice of non-
3 performance and provides for a period of delay before the
4 initiation of suit for breach or repudiation of contract, the
5 contractual period of delay controls and shall apply in lieu
6 of the waiting period specified in subsections (a) and (d).

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

16 (g) ~~COMPUTATION OF TIME.—~~For purposes of this
17 section, the rules regarding computation of time shall be
18 governed by the applicable Federal or State rules of civil
19 procedure.

20 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION.**

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

1 alternative dispute resolution; the parties may also agree
 2 to an extension of that 90-day period.

3 (b) ~~REQUEST MADE AFTER NOTIFICATION PER-~~
 4 ~~IOD.~~—At any time after expiration of the 90-day notifi-
 5 cation period under section 101(a), whether before or after
 6 the filing of a complaint, either party may request the
 7 other party to use alternative dispute resolution.

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

19 **SEC. 103. PLEADING REQUIREMENTS.**

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

24 (1) the nature and amount of each element of
 25 damages; and

1 (2) the factual basis for the calculation of the
2 damages.

3 (b) MATERIAL DEFECTS.—In any year 2000 civil ac-
4 tion in which the plaintiff alleges that a product or service
5 was defective, the complaint shall, with respect to each
6 year 2000 claim—

7 (1) identify with particularity the manifesta-
8 tions of the material defects; and

9 (2) state with particularity the facts supporting
10 the conclusion that the defects were material.

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

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

20 (1) DISMISSAL FOR FAILURE TO MEET PLEAD-
21 ING REQUIREMENTS.—In any year 2000 civil action,
22 the court shall, on the motion of any defendant, dis-
23 miss without prejudice any year 2000 claim asserted
24 in the complaint if any of the requirements under

1 subsection (a), (b), or (c) is not met with respect to
2 the claim.

3 ~~(2) STAY OF DISCOVERY.—~~In any year 2000
4 civil action, all discovery and other proceedings shall
5 be stayed during the pendency of any motion to dis-
6 miss, unless the court finds upon the motion of any
7 party that particularized discovery is necessary to
8 preserve evidence or prevent undue prejudice to that
9 party.

10 ~~(3) PRESERVATION OF EVIDENCE.—~~

11 ~~(A) IN GENERAL.—~~

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

23 ~~(ii) ITEMS.—~~The items described in
24 this clause are all documents, data com-

1 pilations (including electronically stored or
2 recorded data), and tangible objects that—

3 ~~(I) are in the custody or control~~
4 of the party described in clause (i);
5 and

6 ~~(II) relevant to the allegations.~~

7 ~~(B) SANCTION FOR WILLFUL VIOLA-~~
8 TION.—A party aggrieved by the willful failure
9 of an opposing party to comply with clause (A)
10 may apply to the court for an order awarding
11 appropriate sanctions.

12 **SEC. 104. DUTY TO MITIGATE.**

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

18 (b) DAMAGES.—The damages awarded for any claim
19 described in subsection (a) shall exclude any amount that
20 the plaintiff reasonably could have avoided in light of any
21 disclosure or information described in that subsection.

1 **TITLE II—YEAR 2000 CIVIL AC-**
2 **TIONS INVOLVING CON-**
3 **TRACTS**

4 **SEC. 201. CONTRACT PRESERVATION.**

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

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

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

21 **SEC. 202. EVIDENCE OF REASONABLE EFFORTS AND DE-**
22 **FENSES.**

23 (a) REASONABLE EFFORTS.—In any action in which
24 a year 2000 claim is advanced and in which a breach of
25 contract or related claim is alleged, in the resolution of

1 that claim, in addition to any other rights provided by ap-
 2 plicable law, the party against whom the claim of breach
 3 is asserted shall be allowed, for the purpose of limiting
 4 or eliminating the defendant's liability, to offer evidence
 5 that the implementation of the contract by that party, or
 6 the efforts made by that party to implement the contract,
 7 were reasonable in light of the circumstances.

8 (b) IMPOSSIBILITY OR COMMERCIAL IMPRAC-
 9 TICABILITY.—

10 (1) IN GENERAL.—In any action in which a
 11 year 2000 claim is advanced and in which a breach
 12 of contract or related claim is alleged, in resolving
 13 that claim applicability of the doctrines of impos-
 14 sibility and commercial impracticability shall be de-
 15 termined by applicable law in existence on January
 16 1, 1999.

17 (2) RULE OF CONSTRUCTION.—Nothing in this
 18 Act shall be construed as limiting or impairing a
 19 party's right to assert defenses based upon the doc-
 20 trines referred to in paragraph (1).

21 **SEC. 203. DAMAGES LIMITATION.**

22 In any action in which a year 2000 claim is advanced
 23 and that involves a breach of contract, warranty, or re-
 24 lated claim, in resolving that claim the court shall not
 25 award any damages—

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

3 ~~(2) if the contract is silent on those damages;~~
4 by operation of the applicable Federal or State law
5 that governed interpretation of the contract at the
6 time the contract was entered into.

7 **TITLE III—YEAR 2000 CIVIL AC-**
8 **TIONS INVOLVING TORT AND**
9 **OTHER NONCONTRACTUAL**
10 **CLAIMS**

11 **SEC. 301. PROPORTIONATE LIABILITY.**

12 (a) IN GENERAL.—Except in cases involving personal
13 injury, a person against whom a final judgment is entered
14 on a year 2000 claim shall be liable solely for the portion
15 of the judgment that corresponds to the percentage of re-
16 sponsibility of that person, as determined under subsection
17 (b).

18 (b) DETERMINATION OF RESPONSIBILITY.—

19 (1) IN GENERAL.—As to any year 2000 claim,
20 the court shall instruct the jury to answer special in-
21 terrogatories, or if there is no jury, make findings,
22 with respect to each defendant and plaintiff, and
23 each of the other persons claimed by any of the par-
24 ties to have caused or contributed to the loss in-
25 curred by the plaintiff, including persons who have

1 entered into settlements with the plaintiff or plain-
 2 tiffs, concerning the percentage of responsibility of
 3 that person, measured as a percentage of the total
 4 fault of all persons who caused or contributed to the
 5 total loss incurred by the plaintiff.

6 ~~(2) CONTENTS OF SPECIAL INTERROGATORIES~~
 7 ~~OR FINDINGS.~~—The responses to interrogatories, or
 8 findings, as appropriate, under paragraph (1) shall
 9 specify—

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

12 (B) the percentage of responsibility of each
 13 person found to have caused or contributed to
 14 the loss incurred by the plaintiff or plaintiffs.

15 ~~(3) FACTORS FOR CONSIDERATION.~~—In deter-
 16 mining the percentage of responsibility under this
 17 paragraph, the trier of fact shall consider—

18 (A) the nature of the conduct of each per-
 19 son alleged to have caused or contributed to the
 20 loss incurred by the plaintiff; and

21 (B) the nature and extent of the causal re-
 22 lationship between the conduct of each such
 23 person and the damages incurred by the plain-
 24 tiff or plaintiffs.

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

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

5 (a) DEFENDANT'S STATE OF MIND AS TO YEAR 2000
 6 FAILURE.—With respect to any year 2000 claim for
 7 money damages in which the defendant's actual or con-
 8 structive awareness of an actual or potential year 2000
 9 failure is an element of the claim under applicable law,
 10 the defendant shall not be liable unless the plaintiff, in
 11 addition to establishing all other requisite elements of the
 12 claim, proves by clear and convincing evidence that the
 13 defendant actually knew, or recklessly disregarded a
 14 known and substantial risk, that the failure would occur.

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

1 (c) NEGLIGENCE.—With respect to any year 2000
 2 claim for money damages, the defendant shall not be liable
 3 unless the plaintiff establishes by clear and convincing evi-
 4 dence, in addition to all other requisite elements of the
 5 claim, that the defendant knew or should have known that
 6 the actions of the defendant created an unreasonable risk
 7 of harm to the plaintiff.

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

14 **SEC. 303. REASONABLE EFFORTS DEFENSE.**

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

17 (1) the fact that a year 2000 failure occurred
 18 in an entity, facility, system, product, or component
 19 that was within the control of the party against
 20 whom the claim is asserted shall not constitute the
 21 sole basis for recovery; and

22 (2) the party against whom the claim is as-
 23 serted shall be entitled to establish, as a complete
 24 defense to the claim, that the party took measures
 25 that were reasonable under the circumstances to pre-

1 vent the year 2000 failure from occurring or from
2 causing the damages upon which the claim is based.

3 **SEC. 304. DAMAGES LIMITATION.**

4 (a) ~~IN GENERAL.~~—As to any year 2000 claim in
5 which punitive damages may be awarded under applicable
6 law and in which a defendant is found liable for punitive
7 damages, the amount of punitive damages that may be
8 awarded to a claimant shall not exceed the greater of—

9 (1) ~~3~~ times the amount awarded to the claimant
10 for actual damages; or

11 (2) ~~\$250,000.~~

12 (b) ~~SPECIAL RULE.~~—

13 (1) ~~RULE.~~—

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

20 (i) ~~3~~ times the amount awarded to the
21 claimant for actual damages; or

22 (ii) ~~\$250,000.~~

23 (B) ~~DESCRIPTION OF INDIVIDUAL.~~—An in-
24 dividual described in this clause is an individual
25 whose net worth does not exceed \$500,000, is

1 an owner of an unincorporated business that
 2 has fewer than 25 full-time employees, or is any
 3 partnership, corporation, association, unit of
 4 local government, or organization that has
 5 fewer than 25 full-time employees.

6 ~~(2) APPLICABILITY.~~—For purposes of deter-
 7 mining the applicability of this subsection to a cor-
 8 poration, the number of employees of a subsidiary of
 9 a wholly owned corporation shall include all employ-
 10 ees of a parent corporation or any subsidiary of that
 11 parent corporation.

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

15 **SEC. 305. ECONOMIC LOSSES.**

16 ~~(a) IN GENERAL.~~—Subject to subsection (b), a party
 17 to a year 2000 civil action may not recover economic losses
 18 for a year 2000 claim based on tort unless the party is
 19 able to show that at least one of the following cir-
 20 cumstances exists:

21 ~~(1)~~ The recovery of these losses is provided for
 22 in the contract to which the party seeking to recover
 23 such losses is a party.

24 ~~(2)~~ If the contract is silent on those losses, and
 25 the application of the applicable Federal or State

1 law that governed interpretation of the contract at
 2 the time the contract was entered into would allow
 3 recovery of such losses.

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

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

10 (b) TREATMENT OF ECONOMIC LOSSES.—Economic
 11 losses shall be recoverable in a year 2000 civil action only
 12 if applicable Federal law, or applicable State law embodied
 13 in statute or controlling judicial precedent as of January
 14 1, 1999, permits the recovery of such losses in the action.

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

16 (a) IN GENERAL.—A director, officer, or trustee of
 17 a business or other organization (including a corporation,
 18 unincorporated association, partnership, or non-profit or-
 19 ganization) shall not be personally liable as to any year
 20 2000 claim in the capacity of that individual as a director
 21 or officer of the business or organization for an aggregate
 22 amount greater than the greater of—

23 (1) \$100,000; or

24 (2) the amount of cash compensation received
 25 by the director or officer from the business or orga-

1 nization during the 12-month period immediately
2 preceeding the act or omission for which liability was
3 imposed.

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

8 (1) intentionally made materially misleading
9 statements relied upon by the plaintiff regarding any
10 actual or potential year 2000 problem; or

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

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

1 **TITLE IV—CLASS ACTIONS**
 2 **INVOLVING YEAR 2000 CLAIMS**

3 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

4 ~~(a) IN GENERAL.—~~In any action involving a year
 5 2000 claim that a product or service is defective, the ac-
 6 tion may be maintained as a class action in Federal or
 7 State court with respect to that claim only if—

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

10 ~~(2)~~ the court finds that the alleged defect in the
 11 product or service was a material defect with respect
 12 to a majority of the members of the class.

13 ~~(b) DETERMINATION BY COURT.—~~

14 ~~(1) IN GENERAL.—~~As soon as practicable after
 15 the commencement of an action involving a year
 16 2000 claim that a product or service is defective and
 17 that is brought as a class action, the court shall de-
 18 termine by order whether the requirement stated in
 19 paragraph ~~(1)~~ is satisfied.

20 ~~(2) ORDERS.—~~An order under this subsection
 21 may be—

22 ~~(A)~~ conditional; and

23 ~~(B)~~ altered or amended before the decision
 24 on the merits.

1 **SEC. 402. NOTIFICATION.**

2 ~~(a) NOTICE BY MAIL.—~~

3 ~~(1) IN GENERAL.—~~In any year 2000 civil action
 4 that is maintained as a class action, the court, in ad-
 5 dition to any other notice required by applicable
 6 Federal or State law, shall direct notice of the action
 7 to each member of the class by United States mail,
 8 return receipt requested.

9 ~~(2) EXCLUSION OF CERTAIN PERSONS.—~~Any
 10 person whose actual receipt of the notice is not
 11 verified by the court or by counsel for 1 of the par-
 12 ties shall be excluded from the class unless that per-
 13 son informs the court in writing, on a date no later
 14 than the commencement of trial or entry of judg-
 15 ment, that the person wishes to join the class.

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

19 ~~(1) concisely and clearly describe the nature of~~
 20 ~~the action;~~

21 ~~(2) identify the jurisdiction whose law will gov-~~
 22 ~~ern the action;~~

23 ~~(3) identify any potential claims that class~~
 24 ~~counsel chose not to pursue so that the action would~~
 25 ~~satisfy class certification requirements; and~~

1 (4) describe the fee arrangement of class coun-
2 sel.

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

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

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

10 (2) not cause undue delay.

11 **SEC. 404. FEDERAL JURISDICTION IN CLASS ACTIONS IN-**
12 **VOLVING YEAR 2000 CLAIMS.**

13 (a) DIVERSITY JURISDICTION.—Section 1332 of title
14 28, United States Code, is amended—

15 (1) by redesignating subsections (b), (c), and
16 (d) as subsections (c), (d), and (e), respectively; and

17 (2) by inserting after subsection (a) the fol-
18 lowing:

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

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

1 “(ii) any member of a proposed plaintiff class
2 is a foreign state or a citizen or subject of a foreign
3 state and any defendant is a citizen of a State; or

4 “(iii) any member of a proposed plaintiff class
5 is a citizen of a State and any defendant is a citizen
6 or subject of a foreign state.

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

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

12 “(i) the substantial majority of the members of
13 all proposed plaintiff classes are citizens of a single
14 State of which the primary defendants are also citi-
15 zens; and

16 “(ii) the claims asserted will be governed pri-
17 marily by the laws of that State; the district court
18 should abstain from hearing such action.

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

22 “(i) all matters in controversy asserted by the
23 individual members of all proposed plaintiff classes
24 in the aggregate do not exceed the sum or value of
25 \$1,000,000, exclusive of interest and costs;

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

3 “(iii) the primary defendants are States, State
4 officials, or other governmental entities against
5 whom the district court may be foreclosed from or-
6 dering relief, the district court may, in its discretion,
7 abstain from hearing such action.

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

11 “(B) Paragraph (1) and section 1453 shall not apply
12 to a class action described in subparagraph (C) that is
13 based upon the statutory or common law of the State in
14 which the issuer concerned is incorporated (in the case of
15 a corporation) or organized (in the case of any other enti-
16 ty).

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

19 “(i) the purchase or sale of securities by an
20 issuer or an affiliate of an issuer exclusively from or
21 to holders of equity securities of the issuer; or

22 “(ii) any recommendation, position, or other
23 communication with respect to the sale of securities
24 of an issuer that—

1 “(I) is made by or on behalf of the issuer
2 or an affiliate of the issuer to holders of equity
3 securities of the issuer; and

4 “(II) concerns decisions of those equity
5 holders with respect to voting their securities,
6 acting in response to a tender or exchange
7 offer, or exercising dissenters’ or appraisal
8 rights.

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

13 (b) CONFORMING AMENDMENT.—Section 1332(c) of
14 title 28 United States Code, (as redesignated by this sec-
15 tion) is amended by inserting after “pursuant to sub-
16 section (a)” after “Federal courts”.

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

20 “(f) For purposes of subsection (b), a member of a
21 proposed class shall be deemed to be a citizen of a State
22 different from a defendant corporation only if that mem-
23 ber is a citizen of a State different from all States of which
24 the defendant corporation is deemed a citizen.”.

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

4 **“§ 1453. Removal of class actions**

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

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

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

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

19 “(c) PROCEDURE FOR REMOVAL.—

20 “(1) IN GENERAL.—The provisions of section
 21 1446(a) relating to a defendant removing a case
 22 shall apply to a plaintiff removing a case under this
 23 section.

24 “(2) APPLICATION.—With respect to the appli-
 25 cation of section 1446(b), the requirement relating

1 to the 30-day filing period shall be met if a plaintiff
 2 class member who is not a named or representative
 3 class member of the action for which removal is
 4 sought files notice of removal within 30 days after
 5 receipt by such class member, through service or
 6 otherwise, of the initial written notice of the class
 7 action provided at the trial court's direction.”.

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

10 (1) by inserting “, by exercising due diligence,”
 11 after “ascertained”; and

12 (2) by striking “section 1332” and inserting
 13 “section”.

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

“1453. Removal of class actions.”.

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

21 “(f)(1) If, after removal, the court determines that
 22 no aspect of an action that is subject to its jurisdiction
 23 solely under the provisions of section 1332(b) may be
 24 maintained as a class action under Rule 23 of the Federal
 25 Rules of Civil Procedure, the court shall strike the class

1 allegations from the action and remand the action to the
2 State court.

3 ~~“(2) Upon remand of the action, the period of limita-~~
4 ~~tions for any claim that was asserted in the action on be-~~
5 ~~half of any named or unnamed member of any proposed~~
6 ~~class shall be deemed tolled to the full extent provided~~
7 ~~under Federal law.”.~~

8 (h) APPLICATION OF SUBSTANTIVE STATE LAW.—
9 Nothing in the amendments made by this section shall
10 alter the substantive law applicable to an action to which
11 such amendments apply.

12 **TITLE V—EFFECTIVE DATE**

13 **SEC. 501. EFFECTIVE DATE.**

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

16 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

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

19 (b) *TABLE OF CONTENTS.*—*The table of contents for*
20 *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. Pretrial notice.
Sec. 102. Alternative dispute resolution.
Sec. 103. Pleading requirements.
Sec. 104. Duty to mitigate damages.

TITLE II—YEAR 2000 CIVIL ACTIONS INVOLVING CONTRACTS

Sec. 201. Contract preservation.

Sec. 202. Evidence of reasonable efforts and defenses.

Sec. 203. Contract damages.

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

Sec. 301. Economic losses.

Sec. 302. Proportionate liability.

Sec. 303. State of mind and foreseeability.

Sec. 304. Reasonable efforts defense.

Sec. 305. Damages limitation.

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, de-*
4 *vices, and programs—*

5 (i) *are not capable of recognizing certain*
6 *dates in 1999 and after December 31, 1999, and*
7 *will read dates in the year 2000 and thereafter*
8 *as if those dates represent the year 1900 or there-*
9 *after; or*

10 (ii) *will fail to process those dates.*

11 (B) *If not corrected, the problems described in*
12 *subparagraph (A) (referred to in this Act as “year*
13 *2000 computer date-change problems”) and resulting*
14 *failures could incapacitate systems that are essential*

1 to the functioning of markets, commerce, consumer
2 products, utilities, Government, and safety and de-
3 fense systems, in the United States and throughout
4 the world.

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

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

19 (B) *The litigation described in subparagraph (A)*
20 *would have a range of undesirable effects including*
21 *the following:*

22 (i) *It would threaten to waste technical and*
23 *financial resources that are better devoted to cur-*
24 *ing year 2000 computer date-change problems*

1 *and ensuring that systems remain or become*
2 *operational.*

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

7 *(iii) It would strain the legal system of the*
8 *United States, causing particular problems for*
9 *the small businesses and individuals who already*
10 *find that system inaccessible because of its com-*
11 *plexity and expense.*

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

18 *(v) Concern about the potential for liability*
19 *(in particular, concern about the substantial liti-*
20 *gation expense associated with defending against*
21 *even the most insubstantial lawsuits) is prompt-*
22 *ing many persons and businesses with technical*
23 *expertise to avoid projects aimed at curing year*
24 *2000 computer date-change problems.*

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

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

8 (2) to encourage the resolution of year 2000 com-
 9 puter date-change disputes involving economic dam-
 10 ages without recourse to unnecessary, time con-
 11 suming, and wasteful litigation; and

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

16 (c) *SCOPE.*—Nothing in this Act affects any claim for
 17 personal injury, including claims asserted by way of claim,
 18 counterclaim, cross-claim, third-party claim, or otherwise
 19 that arise out of an underlying action for personal injury.

20 **SEC. 3. DEFINITIONS.**

21 *In this Act:*

22 (1) *COMPENSATORY DAMAGES.*—The term “com-
 23 pensatory damages” means damages that compensate
 24 the injured party for the specific injury sustained.

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

3 (3) *DEFENDANT.*—*The term “defendant” means*
 4 *any person against whom a year 2000 claim is as-*
 5 *serted.*

6 (4) *ECONOMIC LOSS.*—*The term “economic*
 7 *loss”—*

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

11 *(B) includes damages for—*

12 *(i) lost profits or sales;*

13 *(ii) business interruption;*

14 *(iii) losses indirectly suffered as a re-*
 15 *sult of the defendant’s wrongful act or omis-*
 16 *sion;*

17 *(iv) losses that arise because of the*
 18 *claims of third parties;*

19 *(v) losses that are required to be plead-*
 20 *ed as special damages; or*

21 *(vi) items defined as consequential*
 22 *damages in the Uniform Commercial Code*
 23 *or an applicable analogous State commer-*
 24 *cial law.*

25 (5) *MATERIAL DEFECT.*—

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

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

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

12 (ii) affects only a component of an
 13 item that, as a whole, substantially operates
 14 or functions as designed; or

15 (iii) has an insignificant or *de mini-*
 16 mis effect on the efficacy of the service pro-
 17 vided.

18 (6) *PERSON.*—The term “person” means any
 19 natural person and any entity, organization, or en-
 20 terprise, including any corporation, company (in-
 21 cluding any joint stock company), association, part-
 22 nership, trust, or governmental entity.

23 (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 similar 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 Mar-
 20 iana Islands, the U.S. Virgin Islands, Guam, Amer-
 21 ican Samoa, and any other territory or possession of
 22 the United States, and any political subdivision
 23 thereof.

24 (11) *YEAR 2000 CIVIL ACTION.*—The term “year
 25 2000 civil action”—

1 (A) means any civil action of any kind
2 brought in any court under Federal, State, or
3 foreign law, in which—

4 (i) a year 2000 claim is asserted; or

5 (ii) any claim or defense is related, di-
6 rectly or indirectly, to an actual or poten-
7 tial year 2000 failure; and

8 (B) does not include any action brought by
9 a Federal, State, or other public entity, agency,
10 or authority acting in a regulatory, supervisory,
11 or enforcement capacity.

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

19 (13) YEAR 2000 FAILURE.—The term “year 2000
20 failure” means any failure by any device or system
21 (including any computer system and any microchip,
22 semiconductor device, or integrated circuit embedded
23 in another device or product), or any software,
24 firmware, or other set or collection of processing in-
25 structions, however constructed, in processing, calcu-

1 *lating, comparing, sequencing, displaying, storing,*
 2 *transmitting, or receiving date-related data,*
 3 *including—*

4 *(A) the failure to accurately administer or*
 5 *account for transitions or comparisons from,*
 6 *into, and between the 20th and 21st centuries,*
 7 *and between 1999 and 2000; or*

8 *(B) the failure to recognize or accurately*
 9 *process any specific date, and the failure accu-*
 10 *rately to account for the status of the year 2000*
 11 *as a leap year.*

12 ***TITLE I—PRELITIGATION PROCE-***
 13 ***DURES FOR YEAR 2000 CIVIL***
 14 ***ACTIONS***

15 ***SEC. 101. PRETRIAL NOTICE.***

16 *(a) NOTIFICATION PERIOD.—Before filing a year 2000*
 17 *claim, except an action for a claim that seeks only injunc-*
 18 *tive relief, a prospective plaintiff shall be required to pro-*
 19 *vide to each prospective defendant a written notice that*
 20 *identifies and describes with particularity—*

21 *(1) any manifestation of a material defect al-*
 22 *leged to have caused injury;*

23 *(2) the injury allegedly suffered or reasonably*
 24 *risked by the prospective plaintiff; and*

1 (3) *the relief or action sought by the prospective*
 2 *plaintiff.*

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

7 (1) *acknowledges receipt of the notice; and*

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

11 (c) *COMMENCEMENT OF ACTION.*—*Except as provided*
 12 *in subsections (d) and (f), a prospective plaintiff shall not*
 13 *file a year 2000 claim in Federal or State court until the*
 14 *expiration of the 90-day period beginning on the date on*
 15 *which the prospective plaintiff provides notice under para-*
 16 *graph (1).*

17 (d) *FAILURE TO RESPOND.*—*If a prospective defend-*
 18 *ant fails to respond to a notice provided under subsection*
 19 *(d) during the 30-day period prescribed in subsection (b)*
 20 *or does not include in the response a description of actions*
 21 *referred to in subsection (b)(2)—*

22 (1) *the 90-day waiting period identified in sub-*
 23 *section (c) shall terminate at the expiration of the 30-*
 24 *day period specified in subsection (b) with respect to*
 25 *that prospective defendant; and*

1 (2) *the prospective plaintiff may commence a*
 2 *year 2000 civil action against such prospective de-*
 3 *fendant immediately upon the termination of that*
 4 *waiting period.*

5 *(e) FAILURE TO PROVIDE NOTICE.—*

6 (1) *IN GENERAL.—Subject to subsections (d) and*
 7 *(f), a defendant may treat a complaint filed by the*
 8 *plaintiff as a notice required under subsection (a) by*
 9 *so informing the court and the plaintiff if the defend-*
 10 *ant determines that a plaintiff has commenced a year*
 11 *2000 civil action—*

12 (A) *without providing the notice specified*
 13 *in subsection (a); or*

14 (B) *before the expiration of the waiting pe-*
 15 *riod specified in subsection (c).*

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

18 (A) *the court shall stay all discovery and*
 19 *other proceedings in the action for a period, as*
 20 *specified in subsection (c), beginning on the date*
 21 *of filing of the complaint; and*

22 (B) *the time for filing answers and all other*
 23 *pleadings shall be tolled during that period.*

24 (f) *EFFECT OF CONTRACTUAL WAITING PERIODS.—In*
 25 *any case in which a contract requires notice of nonperform-*

1 *ance and provides for a period of delay before the initiation*
 2 *of suit for breach or repudiation of contract, the contractual*
 3 *period of delay controls and shall apply in lieu of the other-*
 4 *wise applicable period specified in subsections (c) and (e).*

5 *(g) SANCTION FOR FRIVOLOUS INVOCATION OF THE*
 6 *STAY PROVISION.—If a defendant acts under subsection (e)*
 7 *to stay an action, and the court subsequently finds that the*
 8 *assertion by the defendant that the action is a year 2000*
 9 *civil action was frivolous and made for the purpose of caus-*
 10 *ing unnecessary delay, the court may impose a sanction,*
 11 *including an order to make payments to opposing parties*
 12 *in accordance with Rule 11 of the Federal Rules of Civil*
 13 *Procedure or applicable State rules of procedures.*

14 *(h) COMPUTATION OF TIME.—For purposes of this sec-*
 15 *tion, the rules regarding computation of time shall be con-*
 16 *strued in accordance with applicable Federal or State rules*
 17 *of civil procedure.*

18 *(i) SINGLE PERIOD.—In any claim, action, or*
 19 *proceeding—*

20 *(1) stating a year 2000 claim subject to the pro-*
 21 *visions of subsection (c)(2) regarding commencement*
 22 *of actions applies; or*

23 *(2) to which subsection (e)(2) regarding stays*
 24 *applies;*

1 *only 1 waiting or stay period, not exceeding 90 days shall*
 2 *be accorded to the parties.*

3 (j) *APPLICABILITY OF STATUTES OF LIMITATIONS.—*
 4 *Any applicable statute of limitations shall toll during the*
 5 *period during which a claimant has filed notice under sub-*
 6 *section (a).*

7 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION.**

8 (a) *REQUESTS MADE DURING NOTIFICATION PE-*
 9 *RIOD.—At any time during the 90-day notification period*
 10 *under section 101(a), either party may request the other*
 11 *party to use alternative dispute resolution. If, based upon*
 12 *that request, the parties enter into an agreement to use al-*
 13 *ternative dispute resolution, the parties may also agree to*
 14 *an extension of that 90-day period.*

15 (b) *REQUEST MADE AFTER NOTIFICATION PERIOD.—*
 16 *At any time after expiration of the 90-day notification pe-*
 17 *riod under section 101(a), whether before or after the filing*
 18 *of a complaint, either party may request the other party*
 19 *to use alternative dispute resolution.*

20 (c) *PAYMENT DATE.—*

21 (1) *IN GENERAL.—Except as provided in para-*
 22 *graph (2), if a dispute that is the subject of the com-*
 23 *plaint or responsive pleading is resolved through al-*
 24 *ternative dispute resolution as provided in subsection*
 25 *(a) or (b)—*

1 (A) the defendant shall pay any amount of
 2 funds that the defendant is required to pay the
 3 plaintiff under the settlement not later than 30
 4 days after the date on which the parties settle the
 5 dispute; and

6 (B) all other terms achieved through the res-
 7 olution shall be implemented as promptly as pos-
 8 sible based upon the agreement of the parties.

9 (2) *EXCEPTIONS.*—The 30-day period prescribed
 10 in paragraph (1) shall not apply if—

11 (A) the parties engaged in alternative dis-
 12 pute resolution under this section agree to a dif-
 13 ferent period of time; or

14 (B) a different period of time is established
 15 by contract between the parties.

16 **SEC. 103. PLEADING REQUIREMENTS.**

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

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

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

1 (b) *MATERIAL DEFECTS.—In any year 2000 civil ac-*
 2 *tion in which the plaintiff alleges that a product or service*
 3 *was defective, the complaint shall, with respect to each year*
 4 *2000 claim—*

5 (1) *identify with particularity the manifesta-*
 6 *tions of the material defects; and*

7 (2) *state with particularity the facts supporting*
 8 *the conclusion that the defects were material.*

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

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

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

24 (2) *STAY OF DISCOVERY.—In any year 2000*
 25 *civil action, all discovery and other proceedings shall*

1 *be stayed during the pendency of any motion to dis-*
 2 *miss, unless the court finds upon the motion of any*
 3 *party that particularized discovery is necessary to*
 4 *preserve evidence or prevent undue prejudice to that*
 5 *party.*

6 (3) *PRESERVATION OF EVIDENCE.—*

7 (A) *IN GENERAL.—*

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

18 (ii) *ITEMS.—The items described in*
 19 *this clause are all documents, data compila-*
 20 *tions (including electronically stored or re-*
 21 *corded data), and tangible objects that—*

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

24 (II) *relevant to the allegations.*

1 (B) *SANCTION FOR WILLFUL VIOLATION.*—A
 2 party aggrieved by the willful failure of an op-
 3 posing party to comply with subclause (A) may
 4 apply to the court for an order awarding appro-
 5 priate sanctions.

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

7 *Damages awarded for any year 2000 claim described*
 8 *in subsection (a) shall exclude any amount that the plaintiff*
 9 *reasonably could have avoided in light of any disclosure or*
 10 *information with respect to which the plaintiff was, or rea-*
 11 *sonably should have been, aware.*

12 **TITLE II—YEAR 2000 CIVIL AC-**
 13 **TIONS INVOLVING CON-**
 14 **TRACTS**

15 **SEC. 201. CONTRACT PRESERVATION.**

16 (a) *IN GENERAL.*—Subject to subsection (b), in any
 17 action in which a year 2000 claim is advanced, in resolving
 18 that claim all written contractual terms, including limita-
 19 tions or exclusions of liability or disclaimers of warranty,
 20 shall be strictly enforced, unless the enforcement of such
 21 terms would manifestly and directly contravene applicable
 22 State law embodied in a specific statute specifically ad-
 23 dressing that term as of January 1, 1999.

24 (b) *INTERPRETATION OF CONTRACT.*—In any case in
 25 which a contract under subsection (a) is silent as to a par-

1 *ticular issue, the interpretation of the contract as to that*
 2 *issue shall be determined by applicable law in effect at the*
 3 *time that the contract was entered into.*

4 **SEC. 202. EVIDENCE OF REASONABLE EFFORTS AND DE-**
 5 **FENSES.**

6 *(a) REASONABLE EFFORTS.—In any action in which*
 7 *a year 2000 claim is advanced and in which a breach of*
 8 *contract or related claim is alleged, in the resolution of that*
 9 *claim, in addition to any other rights provided by applica-*
 10 *ble law, the party against whom the claim of breach is as-*
 11 *serted shall be allowed in evidence, to offer evidence that*
 12 *the implementation of the contract by that party, or the*
 13 *efforts made by that party to implement the contract, were*
 14 *reasonable in light of the circumstances.*

15 *(b) IMPOSSIBILITY OR COMMERCIAL IMPRAC-*
 16 *TICABILITY.—*

17 *(1) IN GENERAL.—Notwithstanding any other*
 18 *provision of law, in any action in which a year 2000*
 19 *claim is advanced and in which a breach of contract*
 20 *or related claim is alleged, in resolving that claim ap-*
 21 *plicability of the doctrines of impossibility and com-*
 22 *mercial impracticability shall be determined by ap-*
 23 *plicable law in existence on January 1, 1999.*

24 *(2) RULE OF CONSTRUCTION.—Nothing in this*
 25 *Act shall be construed as limiting or impairing a*

1 *party's right to assert defenses based upon the doc-*
 2 *trines referred to in paragraph (1).*

3 **SEC. 203. CONTRACT DAMAGES.**

4 *In any action in which a year 2000 claim is advanced*
 5 *and that involves a breach of contract, warranty, or related*
 6 *claim, in resolving that claim the court shall not award*
 7 *any damages—*

8 *(1) unless those damages are provided for by the*
 9 *express terms of the contract; or*

10 *(2) if the contract is silent on those damages, by*
 11 *operation of the applicable Federal or State law that*
 12 *governed interpretation of the contract at the time the*
 13 *contract was entered into.*

14 **TITLE III—YEAR 2000 CIVIL AC-**
 15 **TIONS INVOLVING TORT AND**
 16 **OTHER NONCONTRACTUAL**
 17 **CLAIMS**

18 **SEC. 301. ECONOMIC LOSSES.**

19 *(a) IN GENERAL.—Subject to subsection (b), a party*
 20 *to a year 2000 civil action may not recover economic losses*
 21 *for a year 2000 claim based on tort unless the party is able*
 22 *to show that at least 1 of the following circumstances exists:*

23 *(1) The recovery of those losses is provided for in*
 24 *the contract to which the party seeking to recover*
 25 *those losses is a party.*

1 (2) *If the contract is silent on those losses, and*
 2 *the application of the applicable Federal or State law*
 3 *that governed interpretation of the contract at the*
 4 *time the contract was entered into would allow recov-*
 5 *ery of those losses.*

6 (3) *Those losses are incidental to a claim in the*
 7 *year 2000 civil action based on personal injury*
 8 *caused by a year 2000 failure.*

9 (4) *Those losses are incidental to a claim in the*
 10 *year 2000 civil action based on damage to tangible*
 11 *property caused by a year 2000 failure.*

12 (b) *TREATMENT OF ECONOMIC LOSSES.—Economic*
 13 *losses shall be recoverable in a year 2000 civil action only*
 14 *if applicable Federal law, or applicable State law embodied*
 15 *in statute or controlling judicial precedent as of January*
 16 *1, 1999, permits the recovery of those losses in the action.*

17 **SEC. 302. PROPORTIONATE LIABILITY.**

18 (a) *IN GENERAL.—Except as provided in subsection*
 19 (c), *a person against whom a final judgment is entered on*
 20 *a year 2000 claim shall be liable solely for the portion of*
 21 *the judgment that corresponds to the percentage of responsi-*
 22 *bility of that person, as determined under subsection (b).*

23 (b) *DETERMINATION OF RESPONSIBILITY.—*

24 (1) *IN GENERAL.—With respect to any year 2000*
 25 *claim, the court shall instruct the jury to answer spe-*

1 *cial interrogatories, or if there is no jury, make find-*
 2 *ings, with respect to each defendant and plaintiff,*
 3 *and each of the other persons claimed by any of the*
 4 *parties to have caused or contributed to the loss in-*
 5 *curring by the plaintiff, including any person who has*
 6 *entered into a settlement with the plaintiff, con-*
 7 *cerning the percentage of responsibility of that person,*
 8 *measured as a percentage of the total fault of all per-*
 9 *sons who caused or contributed to the total loss in-*
 10 *curring by the plaintiff.*

11 (2) *CONTENTS OF SPECIAL INTERROGATORIES OR*
 12 *FINDINGS.—Each response to an interrogatory, or*
 13 *finding, as appropriate, under paragraph (1) shall*
 14 *specify—*

15 (A) *the total amount of damages that the*
 16 *plaintiff is entitled to recover; and*

17 (B) *the percentage of responsibility of each*
 18 *person found to have caused or contributed to the*
 19 *loss incurred by the plaintiff.*

20 (3) *FACTORS FOR CONSIDERATION.—In deter-*
 21 *mining the percentage of responsibility under this*
 22 *paragraph, the trier of fact shall consider—*

23 (A) *the nature of the conduct of each person*
 24 *alleged to have caused or contributed to the loss*
 25 *incurred by the plaintiff; and*

1 (B) *the nature and extent of the causal rela-*
 2 *tionship between the conduct of each such person*
 3 *and the damages incurred by the plaintiff.*

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

7 (c) *EXCEPTION.*—*This section does not apply if the*
 8 *plaintiff is an individual whose net worth is less than*
 9 *\$200,000 and the plaintiff's damages were more than 10 per-*
 10 *cent of his or her net worth. In such a case, the proportion-*
 11 *ally liable defendants are jointly and severally liable for*
 12 *any uncollectable amount.*

13 **SEC. 303. STATE OF MIND AND FORESEEABILITY.**

14 (a) *DEFENDANT'S STATE OF MIND AS TO YEAR 2000*
 15 *FAILURE.*—*With respect to any year 2000 claim for money*
 16 *damages in which the defendant's actual or constructive*
 17 *awareness of an actual or potential year 2000 failure is*
 18 *an element of the claim under applicable law, the defendant*
 19 *shall not be liable unless the plaintiff, in addition to estab-*
 20 *lishing all other requisite elements of the claim, proves by*
 21 *clear and convincing evidence that the defendant actually*
 22 *knew, or recklessly disregarded a known and substantial*
 23 *risk, that the failure would occur.*

24 (b) *INJURY TO PLAINTIFF.*—*With respect to any year*
 25 *2000 claim for money damages in which the defendant's*

1 *actual or constructive awareness of actual or potential*
 2 *harm to plaintiff is greater than the standard for negligence*
 3 *in subsection (c) and is an element of the claim under ap-*
 4 *plicable law, the defendant shall not be liable unless the*
 5 *plaintiff, in addition to establishing all other requisite ele-*
 6 *ments of the claim, proves by clear and convincing evidence*
 7 *that the defendant actually knew, or recklessly disregarded*
 8 *a known and substantial risk, that plaintiff would suffer*
 9 *that harm.*

10 (c) *NEGLIGENCE.—With respect to any year 2000*
 11 *claim for money damages, the defendant shall not be liable*
 12 *unless the plaintiff establishes by clear and convincing evi-*
 13 *dence, in addition to all other requisite elements of the*
 14 *claim, that the defendant knew or should have known that*
 15 *the actions of the defendant created an unreasonable risk*
 16 *of harm to the plaintiff.*

17 (d) *PRESERVATION OF EXISTING LAW.—Nothing in*
 18 *subsection (a), (b), or (c) shall be deemed to create any year*
 19 *2000 claim or to relieve the plaintiff in any year 2000 civil*
 20 *action of the obligation of that plaintiff to establish any*
 21 *element of the cause of action of that plaintiff under appli-*
 22 *cable law.*

23 **SEC. 304. REASONABLE EFFORTS DEFENSE.**

24 *Except for breach or repudiation of contract claims,*
 25 *or claims involving fraud or intentional tort, with respect*

1 *to any year 2000 claim in which the plaintiff is seeking*
 2 *money damages—*

3 *(1) the fact that a year 2000 failure occurred in*
 4 *an entity, facility, system, product, or component that*
 5 *was within the control of the party against whom the*
 6 *claim is asserted shall not constitute the sole basis for*
 7 *recovery; and*

8 *(2) the party against whom the claim is asserted*
 9 *shall be entitled to establish, as a complete defense to*
 10 *the claim, that all of the actions of the party were*
 11 *reasonable under the circumstances to prevent the*
 12 *year 2000 failure from occurring or from causing the*
 13 *damages upon which the claim is based.*

14 **SEC. 305. DAMAGES LIMITATION.**

15 *(a) IN GENERAL.—With respect to any year 2000*
 16 *claim in which punitive damages may be awarded under*
 17 *applicable law and in which a defendant is found liable*
 18 *for punitive damages, the amount of punitive damages that*
 19 *may be awarded to a claimant shall not exceed the greater*
 20 *of—*

21 *(1) 3 times the amount awarded to the claimant*
 22 *for compensatory damages; or*

23 *(2) \$250,000.*

24 *(b) SPECIAL RULE.—*

25 *(1) RULE.—*

1 (A) *IN GENERAL.*—Notwithstanding sub-
2 section (a), as to any year 2000 claim in which
3 the defendant is found liable for punitive dam-
4 ages and the defendant is a person described in
5 subparagraph (B), the amount of punitive dam-
6 ages shall not exceed the lesser of—

7 (i) 3 times the amount awarded to the
8 claimant for compensatory damages; or

9 (ii) \$250,000.

10 (B) *DESCRIPTION OF PERSONS.*—A person
11 described in this clause is—

12 (i) an individual—

13 (I) whose net worth does not ex-
14 ceed \$500,000; or

15 (II) who is an owner of an unin-
16 corporated business that has fewer than
17 25 full-time employees; or

18 (ii) any partnership, corporation, asso-
19 ciation, unit of local government, or organi-
20 zation that has fewer than 25 full-time em-
21 ployees.

22 (2) *APPLICABILITY.*—For purposes of deter-
23 mining the applicability of this subsection to a cor-
24 poration, the number of employees of a subsidiary of
25 a wholly owned corporation shall include all employ-

1 ees of a parent corporation or any subsidiary of that
2 parent corporation.

3 (c) *APPLICATION OF LIMITATIONS BY THE COURT.*—

4 *The limitations contained in subsection (a) or (b) shall be*
5 *applied by the court and shall not be disclosed to the jury.*

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

7 (a) *IN GENERAL.*—A director, officer, or trustee of a
8 business or other organization (including a corporation,
9 unincorporated association, partnership, or nonprofit orga-
10 nization) shall not be personally liable as to any year 2000
11 claim in the capacity of that individual as a director or
12 officer of the business or organization for an aggregate
13 amount greater than the greater of—

14 (1) \$100,000; or

15 (2) the amount of cash compensation received by
16 the director or officer from the business or organiza-
17 tion during the 12-month period immediately pre-
18 ceding the act or omission for which liability was im-
19 posed.

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

1 (1) *intentionally made materially misleading*
 2 *statements relied upon by the plaintiff regarding any*
 3 *actual or potential year 2000 problem; or*

4 (2) *intentionally withheld material information*
 5 *regarding any actual or potential year 2000 problem*
 6 *of the business or organization that the director or of-*
 7 *ficer had a duty to disclose.*

8 (c) *RULE OF CONSTRUCTION.—Nothing in this section*
 9 *shall be deemed to impose, or to permit the imposition of,*
 10 *personal liability on any director, officer, or trustee in ex-*
 11 *cess of the aggregate amount of liability to which such direc-*
 12 *tor, officer, or trustee would be subject under applicable*
 13 *State law in existence on January 1, 1999 (including any*
 14 *charter or bylaw authorized by that State law).*

15 **TITLE IV—CLASS ACTIONS** 16 **INVOLVING YEAR 2000 CLAIMS**

17 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

18 (a) *IN GENERAL.—In any action involving a year*
 19 *2000 claim that a product or service is defective, the action*
 20 *may be maintained as a class action in Federal or State*
 21 *court with respect to that claim only if—*

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

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

4 **(b) DETERMINATION BY COURT.—**

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

11 (2) *ORDERS.—An order under this subsection*
 12 *may be—*

13 (A) *conditional; and*

14 (B) *altered or amended before the decision*
 15 *on the merits.*

16 **SEC. 402. NOTIFICATION.**

17 **(a) NOTICE BY MAIL.—**

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

24 (2) *EXCLUSION OF CERTAIN PERSONS.—Any*
 25 *person whose actual receipt of the notice is not*

1 *verified by the court or by counsel for 1 of the parties*
 2 *shall be excluded from the class unless that person in-*
 3 *forms the court in writing, on a date no later than*
 4 *the commencement of trial or entry of judgment, that*
 5 *the person wishes to join the class.*

6 **(b) CONTENTS OF NOTICE.**—*In addition to any infor-*
 7 *mation required by applicable Federal or State law, the no-*
 8 *tice described in this subsection shall—*

9 *(1) concisely and clearly describe the nature of*
 10 *the action;*

11 *(2) identify the jurisdiction whose law will gov-*
 12 *ern the action;*

13 *(3) identify any potential claims that class coun-*
 14 *sel chose not to pursue so that the action would sat-*
 15 *isfy class certification requirements; and*

16 *(4) describe the fee arrangement of class counsel.*

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

18 *Before determining whether to certify a class in a year*
 19 *2000 civil action, the court may decide a motion to dismiss*
 20 *or for summary judgment made by any party if the court*
 21 *concludes that decision would—*

22 *(1) promote the fair and efficient adjudication of*
 23 *the controversy; and*

24 *(2) not cause undue delay.*

1 **SEC. 404. FEDERAL JURISDICTION IN CLASS ACTIONS IN-**
 2 **VOLVING YEAR 2000 CLAIMS.**

3 (a) *DIVERSITY JURISDICTION.*—Section 1332 of title
 4 28, *United States Code*, is amended—

5 (1) *by redesignating subsections (b), (c), and (d)*
 6 *as subsections (c), (d), and (e), respectively; and*

7 (2) *by inserting after subsection (a) the fol-*
 8 *lowing:*

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

13 “(i) *any member of a proposed plaintiff class is*
 14 *a citizen of a State different from any defendant;*

15 “(ii) *any member of a proposed plaintiff class is*
 16 *a foreign state, or a citizen or subject of a foreign*
 17 *state, and any defendant is a citizen of a State; or*

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

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

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

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

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

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

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

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

17 “(iii) the primary defendants are States, State
 18 officials, or other governmental entities against whom
 19 the district court may be foreclosed from ordering re-
 20 lief, the district court may, in its discretion, abstain
 21 from hearing such action.

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

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

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

9 “(i) the purchase or sale of securities by an
 10 issuer or an affiliate of an issuer exclusively from or
 11 to holders of equity securities of the issuer; or

12 “(ii) any recommendation, position, or other
 13 communication with respect to the sale of securities of
 14 an issuer that—

15 “(I) is made by or on behalf of the issuer
 16 or an affiliate of the issuer to holders of equity
 17 securities of the issuer; and

18 “(II) concerns decisions of those equity hold-
 19 ers with respect to voting their securities, acting
 20 in response to a tender or exchange offer, or exer-
 21 cising dissenters’ or appraisal rights.

22 “(D) As used in this paragraph, the terms ‘issuer’, ‘se-
 23 curity’, and ‘equity security’ have the meanings given those
 24 terms in section 3 of the Securities Exchange Act of 1934
 25 (15 U.S.C. 78c).”.

1 (b) *CONFORMING AMENDMENT.*—Section 1332(c) of
 2 title 28, United States Code (as redesignated by this sec-
 3 tion), is amended by inserting “pursuant to subsection (a)”
 4 after “Federal courts”.

5 (c) *DETERMINATION OF DIVERSITY.*—Section 1332, as
 6 amended by this section, is further amended by adding at
 7 the end the following:

8 “(f) For purposes of subsection (b), a member of a pro-
 9 posed class shall be deemed to be a citizen of a State dif-
 10 ferent from a defendant corporation only if that member
 11 is a citizen of a State different from all States of which
 12 the defendant corporation is deemed a citizen.”.

13 (d) *REMOVAL OF CLASS ACTIONS.*—Chapter 89 of title
 14 28, United States Code, is amended by adding at the end
 15 the following:

16 **“§ 1453. Removal of class actions**

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

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

23 “(2) by any plaintiff class member who is not a
 24 named or representative class member of the action

1 *for which removal is sought, without the consent of all*
 2 *members of such class.*

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

6 “(c) *PROCEDURE FOR REMOVAL.*—

7 “(1) *IN GENERAL.*—*The provisions of section*
 8 *1446(a) relating to a defendant removing a case shall*
 9 *apply to a plaintiff removing a case under this sec-*
 10 *tion.*

11 “(2) *APPLICATION.*—*With respect to the applica-*
 12 *tion of section 1446(b), the requirement relating to the*
 13 *30-day filing period shall be met if a plaintiff class*
 14 *member who is not a named or representative class*
 15 *member of the action for which removal is sought files*
 16 *notice of removal within 30 days after receipt by such*
 17 *class member, through service or otherwise, of the ini-*
 18 *tial written notice of the class action provided at the*
 19 *trial court’s direction.”.*

20 “(e) *REMOVAL LIMITATIONS.*—*Section 1446(b) is*
 21 *amended in the second undesignated paragraph—*

22 (1) *by inserting “, by exercising due diligence,”*
 23 *after “ascertained”; and*

24 (2) *by striking “section 1332” and inserting*
 25 *“section”.*

1 (f) *TECHNICAL AND CONFORMING AMENDMENTS.*—*The*
 2 *table of sections for chapter 89 of title 28, United States*
 3 *Code, is amended by adding after the item relating to sec-*
 4 *tion 1452 the following:*

“1453. Removal of class actions.”.

5 (g) *PROCEDURE AFTER REMOVAL.*—*Section 1447 of*
 6 *title 28, United States Code, is amended by adding at the*
 7 *end the following:*

8 “(f)(1) *If, after removal, the court determines that no*
 9 *aspect of an action that is subject to its jurisdiction solely*
 10 *under the provisions of section 1332(b) may be maintained*
 11 *as a class action under Rule 23 of the Federal Rules of*
 12 *Civil Procedure, the court shall strike the class allegations*
 13 *from the action and remand the action to the State court.*

14 “(2) *Upon remand of the action, the period of limita-*
 15 *tions for any claim that was asserted in the action on behalf*
 16 *of any named or unnamed member of any proposed class*
 17 *shall be deemed tolled to the full extent provided under Fed-*
 18 *eral law.”.*

19 (h) *APPLICATION OF SUBSTANTIVE STATE LAW.*—
 20 *Nothing in the amendments made by this section shall alter*
 21 *the substantive law applicable to an action to which such*
 22 *amendments apply.*

1 ***TITLE V—EFFECTIVE DATE***

2 ***SEC. 501. EFFECTIVE DATE.***

3 *This Act and the amendments made by this Act shall*
4 *take effect on January 1, 1999.*