

106TH CONGRESS
1ST SESSION

S. 738

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.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 “Y2K Fairness in Litigation 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.

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. Economic losses.

TITLE IV—CLASS ACTIONS INVOLVING YEAR 2000 CLAIMS

- Sec. 401. Minimum injury requirement.

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.

9 (B) If not corrected, the problem described in
 10 subparagraph (A) and resulting failures could inca-
 11 pacitate systems that are essential to the functioning

1 of markets, commerce, consumer products, utilities,
2 Government, and safety and defense systems, in the
3 United States and throughout the world.

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

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

18 (B) The litigation described in subparagraph
19 (A) would have a range of undesirable effects includ-
20 ing the following:

21 (i) It would threaten to waste technical
22 and financial resources that are better devoted
23 to curing year 2000 computer date-change
24 problems and ensuring that systems remain or
25 become operational.

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

5 (iii) It would strain the Nation's legal sys-
6 tem, causing particular problems for the small
7 businesses and individuals who already find
8 that system inaccessible because of its com-
9 plexity and expense.

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

16 (v) Concern about the potential for liabil-
17 ity—in particular, concern about the substan-
18 tial litigation expense associated with defending
19 against even the most insubstantial lawsuits—
20 is prompting many persons and businesses with
21 technical expertise to avoid projects aimed at
22 curing year 2000 computer date-change prob-
23 lems.

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
5 give all businesses and users of technology products
6 reasonable incentives to solve year 2000 computer
7 date-change problems before they develop;

8 (2) to encourage the resolution of year 2000
9 computer date-change disputes involving economic
10 damages 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 claims for
17 personal injury.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

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

22 (A) means damages for physical injury to
23 any person or property; and

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

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

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

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
10 to 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
16 omission;

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

19 (v) losses that are required to be
20 pleaded as special damages; or

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

24 (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 defects 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 oper-
14 ates or functions as designed; or

15 (ii) has an insignificant or de minimis
16 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 (includ-
21 ing any joint stock company), association, partner-
22 ship, trust, or government entity.

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

1 (8) STATE.—The Term “State” means any
2 State of the United States, the District of Columbia,
3 the Commonwealth of Puerto Rico, the Northern
4 Mariana Islands, the U.S. Virgin Islands, Guam,
5 American Samoa, and any other territory or posses-
6 sion of the United States, and any political subdivi-
7 sion thereof.

8 (9) YEAR 2000 CIVIL ACTION.—The term “year
9 2000 civil action”—

10 (A) means any civil action of any kind
11 brought in any court under Federal, State, or
12 foreign law, in which—

13 (i) a year 2000 claim is asserted; and

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

17 (B) does not include any action brought by
18 a Federal, State, or other public entity, agency,
19 or authority acting in a regulatory, supervisory,
20 or enforcement capacity.

21 (10) YEAR 2000 CLAIM.—The term “year 2000
22 claim” means any claim or cause of action of any
23 kind, whether asserted by way of claim, counter-
24 claim, cross-claim, third-party claim, or otherwise, in
25 which the plaintiff’s alleged loss or harm resulted,

1 directly or indirectly, from an actual or potential
2 year 2000 failure.

3 (11) YEAR 2000 FAILURE.—The term “year
4 2000 failure” means any failure by any device or
5 system (including any computer system and any
6 microchip or integrated circuit embedded in another
7 device or product), or any software, firmware, or
8 other set or collection of processing instructions,
9 however constructed, in processing, calculating, com-
10 paring, sequencing, displaying, storing, transmitting,
11 or receiving date-related data, including—

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

16 (B) the failure to recognize or accurately
17 process any specific date, and the failure accu-
18 rately to account for the status of the year
19 2000 as a leap year.

20 **TITLE I—PRELITIGATION PRO-**
21 **CEDURES FOR YEAR 2000**
22 **CIVIL ACTIONS**

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

24 (a) NOTIFICATION PERIOD.—

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

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

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

11 (C) the relief or action sought by the pro-
12 spective plaintiff.

13 (2) COMMENCEMENT OF ACTION.—Except as
14 provided in subsections (c) and (e), a prospective
15 plaintiff shall not file a year 2000 claim in Federal
16 or State court until the expiration of the 90-day pe-
17 riod beginning on the date on which the prospective
18 plaintiff provides notice under paragraph (1).

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

23 (1) acknowledges receipt of the notice; and

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

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

9 (1) the 90-day waiting period identified in sub-
10 section (a) shall terminate at the expiration of the
11 30-day period specified in subsection (b) with re-
12 spect to that prospective defendant; and

13 (2) the prospective plaintiff may commence a
14 year 2000 civil action against such prospective de-
15 fendant immediately upon the termination of that
16 waiting period.

17 (d) FAILURE TO PROVIDE NOTICE.—

18 (1) IN GENERAL.—Subject to subsections (c)
19 and (e), a defendant may treat a complaint filed by
20 the plaintiff as a notice required under subsection
21 (a) by so informing the court and the plaintiff if the
22 defendant determines that a plaintiff has com-
23 menced a year 2000 civil action—

24 (A) without providing the notice specified
25 in subsection (a); or

1 (B) before the expiration of the waiting pe-
2 riod specified in subsection (a).

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

5 (A) the court shall stay all discovery and
6 other proceedings in the action for the period
7 specified in subsection (a) beginning on the
8 date of filing of the complaint; and

9 (B) the time for filing answers and all
10 other pleadings shall be tolled during this 90-
11 day period.

12 (e) EFFECT OF CONTRACTUAL WAITING PERIODS.—
13 In any case in which a contract requires notice of non-
14 performance and provides for a period of delay before the
15 initiation of suit for breach or repudiation of contract, the
16 contractual period of delay controls and shall apply in lieu
17 of the waiting period specified in subsections (a) and (d).

18 (f) SANCTION FOR FRIVOLOUS INVOCATION OF THE
19 STAY PROVISION.—If a defendant acts under subsection
20 (d) to stay an action, and the court subsequently finds
21 that the assertion by the defendant that the action is a
22 year 2000 civil action was frivolous and made for the pur-
23 pose of causing unnecessary delay, the court may impose
24 a sanction, including an order to make payments to oppos-

1 ing parties in accordance with Rule 11 of the Federal
2 Rules of Civil Procedure.

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

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
13 alternative dispute resolution, the parties may also agree
14 to an extension of that 90-day period.

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

20 (c) PAYMENT DATE.—If a dispute that is the subject
21 of the complaint or responsive pleading is resolved through
22 alternative dispute resolution as provided in subsection (a)
23 or (b), the defendant shall pay any amount of funds that
24 the defendant is required to pay the plaintiff under the
25 settlement not later than 30 days after the date on which

1 the parties settle the dispute, and all other terms shall
2 be implemented as promptly as possible based upon the
3 agreement of the parties, unless another period of time
4 is agreed to by the parties or established by contract be-
5 tween the parties.

6 **SEC. 103. PLEADING REQUIREMENTS.**

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

11 (1) the nature and amount of each element of
12 damages; and

13 (2) the factual basis for the calculation of the
14 damages.

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

19 (1) identify with particularity the manifesta-
20 tions of the material defects; and

21 (2) state with particularity the facts supporting
22 the conclusion that the defects were material.

23 (c) REQUIRED STATE OF MIND.—In any year 2000
24 civil action in which a year 2000 claim is asserted with
25 respect to which the plaintiff may prevail only on proof

1 that the defendant acted with a particular state of mind,
2 the complaint shall, with respect to each element of the
3 claim, state in detail the facts giving rise to a strong infer-
4 ence that the defendant acted with the required state of
5 mind.

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

7 (1) DISMISSAL FOR FAILURE TO MEET PLEAD-
8 ING REQUIREMENTS.—In any year 2000 civil action,
9 the court shall, on the motion of any defendant, dis-
10 miss without prejudice any year 2000 claim asserted
11 in the complaint if any of the requirements under
12 subsection (a), (b), or (c) is not met with respect to
13 the claim.

14 (2) STAY OF DISCOVERY.—In any year 2000
15 civil action, all discovery and other proceedings shall
16 be stayed during the pendency of any motion pursu-
17 ant to this subsection to dismiss, unless the court
18 finds upon the motion of any party that particular-
19 ized discovery is necessary to preserve evidence or
20 prevent undue prejudice to that party.

21 (3) PRESERVATION OF EVIDENCE.—

22 (A) IN GENERAL.—

23 (i) TREATMENT OF EVIDENCE.—Dur-
24 ing the pendency of any stay of discovery
25 entered under this paragraph, unless oth-

1 erwise ordered by the court, any party to
2 the action shall treat the items described
3 in clause (ii) as if they were a subject of
4 a continuing request for production of doc-
5 uments from an opposing party under ap-
6 plicable Federal or State rules of civil pro-
7 cedure.

8 (ii) ITEMS.—The items described in
9 this clause are all documents, data com-
10 pilations (including electronically stored or
11 recorded data), and tangible objects that—

12 (I) are in the custody or control
13 of the party described in clause (i);
14 and

15 (II) relevant to the allegations.

16 (B) SANCTION FOR WILLFUL VIOLA-
17 TION.—A party aggrieved by the willful failure
18 of an opposing party to comply with clause (A)
19 may apply to the court for an order awarding
20 appropriate sanctions.

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

22 Damages awarded for any year 2000 claim shall ex-
23 clude any amount that the plaintiff reasonably should have
24 avoided in light of any disclosure or information with re-

1 spect to which the plaintiff was, or reasonably should have
2 been, aware.

3 **TITLE II—YEAR 2000 CIVIL AC-**
4 **TIONS INVOLVING CON-**
5 **TRACTS**

6 **SEC. 201. CONTRACT PRESERVATION.**

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

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

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

23 **SEC. 202. EVIDENCE OF REASONABLE EFFORTS.**

24 (a) REASONABLE EFFORTS.—In any action in which
25 a year 2000 claim is advanced and in which a breach of

1 contract or related claim is alleged, in the resolution of
2 that claim, in addition to any other rights provided by ap-
3 plicable law, the party against whom the claim of breach
4 is asserted shall be allowed, for the purpose of limiting
5 the award of damages, to offer evidence that the imple-
6 mentation of the contract by that party, or the efforts
7 made by that party to implement the contract, were rea-
8 sonable in light of the circumstances.

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

11 (1) IN GENERAL.—In any action in which a
12 year 2000 claim is advanced and in which a breach
13 of contract or related claim is alleged, in resolving
14 that claim applicability of the doctrines of impos-
15 sibility and commercial impracticability shall be de-
16 termined by applicable law in existence on January
17 1, 1999.

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

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.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), a person against whom a final judgment
9 is entered on a year 2000 claim shall be liable solely
10 for the portion of the judgment that corresponds to
11 the percentage of responsibility of that person, as
12 determined under subsection (b).

13 (2) EXCEPTION.—Paragraph (1) does not
14 apply—

15 (A) if the plaintiff is an individual whose net
16 worth is less than \$200,000 and the plaintiffs
17 damages were more than 10 percent of his or
18 her net worth, the proportionately liable defend-
19 ants are jointly and severally liable for any un-
20 collectable amount; or

21 (B) if the defendant acted knowingly.

22 (b) DETERMINATION OF RESPONSIBILITY.—

23 (1) IN GENERAL.—As to any year 2000 claim,
24 the court shall instruct the jury to answer special in-
25 terrogatories, or if there is no jury, make findings,

1 with respect to each defendant and plaintiff, and
2 each of the other persons claimed by any of the par-
3 ties to have caused or contributed to the loss in-
4 curred by the plaintiff, including persons who have
5 entered into settlements with the plaintiff or plain-
6 tiffs, concerning the percentage of responsibility of
7 that person, measured as a percentage of the total
8 fault of all persons who caused or contributed to the
9 total loss incurred by the plaintiff.

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

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

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

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

22 (A) the nature of the conduct of each per-
23 son alleged to have caused or contributed to the
24 loss incurred by the plaintiff; and

1 (B) the nature and extent of the causal re-
 2 lationship between the conduct of each such
 3 person and the damages incurred by the plain-
 4 tiff or plaintiffs.

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

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

9 (a) NEGLIGENCE.—With respect to any year 2000
 10 claim for money damages, the defendant shall not be liable
 11 unless the plaintiff establishes, in addition to all other req-
 12 uisite elements of the claim, that the actions of the defend-
 13 ant created an unreasonable risk of harm to the plaintiff.

14 (b) PRESERVATION OF EXISTING LAW.—Nothing in
 15 subsection (a) shall be deemed to create any year 2000
 16 claim or to relieve the plaintiff in any year 2000 civil ac-
 17 tion of the obligation of that plaintiff to establish any ele-
 18 ment of the cause of action of that plaintiff under applica-
 19 ble law.

20 **SEC. 303. REASONABLE EFFORTS DEFENSE.**

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

23 (1) the fact that a year 2000 failure occurred
 24 in an entity, facility, system, product, or component
 25 that was within the control of the party against

1 whom the claim is asserted shall not constitute the
2 sole basis for recovery; and

3 (2) the party against whom the claim is as-
4 serted shall be entitled to establish, as a complete
5 defense to the claim, that the party took measures
6 that were reasonable under the circumstances to pre-
7 vent the year 2000 failure from occurring or from
8 causing the damages upon which the claim is based.

9 **SEC. 304. ECONOMIC LOSSES.**

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

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

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

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

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

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

9 **TITLE IV—CLASS ACTIONS**
10 **INVOLVING YEAR 2000 CLAIMS**

11 **SEC. 401. MINIMUM INJURY REQUIREMENT.**

12 (a) IN GENERAL.—In any action involving a year
13 2000 claim that a product or service is defective, the ac-
14 tion may be maintained as a class action in Federal or
15 State court with respect to that claim only if—

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

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

21 (b) DETERMINATION BY COURT.—

22 (1) IN GENERAL.—As soon as practicable after
23 the commencement of an action involving a year
24 2000 claim that a product or service is defective and
25 that is brought as a class action, the court shall de-

1 terminate by order whether the requirement stated in
2 paragraph (1) is satisfied.

3 (2) ORDERS.—An order under this subsection
4 may be—

5 (A) conditional; and

6 (B) altered or amended before the decision
7 on the merits.

8 **TITLE V—EFFECTIVE DATE**

9 **SEC. 501. EFFECTIVE DATE.**

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

○