

106TH CONGRESS
1ST SESSION

S. 96

To regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of the year's date.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. McCAIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To regulate commerce between and among the several States by providing for the orderly resolution of disputes arising out of computer-based problems related to processing data that includes a 2-digit expression of the year's date.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Y2K Act".

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

1 (1) Y2K ACTION.—The term “Y2K action”
2 means a civil action commenced in any Federal or
3 State court for a cause of action arising out of a
4 Y2K failure but does include an action to recover
5 damages for personal injury (excluding emotional
6 harm) or wrongful death.

7 (2) Y2K FAILURE.—The term “Y2K failure”
8 means a systems product failure caused by the in-
9 ability of a computer system, program, or software’s
10 failure to accurately store, process, provide, or re-
11 ceive data containing the year-2000 date.

12 (3) Y2K-COMPLIANT.—The term “Y2K-compli-
13 ant” means—

14 (A) with respect to an information tech-
15 nology product, that the product does not have
16 a Y2K failure; and

17 (B) with respect to a business, that none
18 of that business’s information technology prod-
19 ucts that materially affects the business’s ca-
20 pacity to deliver goods and services has a Y2K
21 failure.

22 (4) INFORMATION TECHNOLOGY PRODUCT.—
23 The term “information technology product” means a
24 computer, a computer program, or computer soft-

1 ware, or product using a computer program, chip, or
2 computer software.

3 **SEC. 3. APPLICABILITY; PREEMPTION.**

4 (a) **APPLICABILITY TO Y2K ACTIONS.**—This Act ap-
5 plies to any Y2K action, commenced after the date of en-
6 actment of this Act, brought in a Federal or State court.

7 (b) **SCOPE OF PREEMPTION.**—This Act supersedes
8 any State law regarding recovery for harm caused by a
9 Y2K failure only to the extent that this Act establishes
10 a rule of law applicable to any such recovery which is in-
11 consistent with State law. Any issue arising under this Act
12 that is not governed by any such rule of law shall be gov-
13 erned by applicable State or Federal law.

14 (c) **ACTIONS FOR PERSONAL INJURY.**—This Act does
15 not apply to a civil action brought for personal injury to
16 the extent that the action is based on physical injury.

17 **SEC. 4. EXCLUSIVE REMEDIES.**

18 (a) **IN GENERAL.**—The remedies provided by this Act
19 are the exclusive remedies available to a plaintiff in a Y2K
20 action, except as may be otherwise provided in a contract
21 to which the plaintiff and the defendant are parties.

22 (b) **DEFENDANT’S OPPORTUNITY TO FIX PROB-**
23 **LEM.**—A Y2K action may not proceed to trial until—

1 (1) the plaintiff has notified the defendant in
2 writing, describing the Y2K failure with particular-
3 ity; and

4 (2) the plaintiff has afforded the defendant the
5 opportunity, including reasonable access to comput-
6 ers and computer software affected by the Y2K fail-
7 ure described in the notice, to fix the problem.

8 **SEC. 5. DAMAGES.**

9 (a) **ECONOMIC LOSS.**—Except as otherwise provided
10 in this section, damages awarded in a Y2K action are lim-
11 ited to economic loss.

12 (b) **OTHER DAMAGES.**—

13 (1) **IN GENERAL.**—Damages in a Y2K action
14 (including punitive damages) other than for eco-
15 nomic loss may not exceed the greater of—

16 (A) 3 times the amount awarded for eco-
17 nomic loss; or

18 (B) \$250,000.

19 (2) **SPECIAL RULE.**—In the case of a
20 defendant—

21 (A) who—

22 (i) is sued in his or her capacity as a
23 individual; and

24 (ii) whose net worth does not exceed
25 \$500,000; or

1 (B) that is an unincorporated business, a
2 partnership, corporation, association, unit of
3 local government, or organization with fewer
4 than 25 full-time employees,
5 paragraph (1) shall be applied by substituting
6 “\$50,000” for “\$250,000” in subparagraph (B).

7 (c) PUNITIVE DAMAGES.—No amount shall be
8 awarded a plaintiff in a Y2K action for punitive
9 damages—

10 (1) except to the extent authorized by State
11 law; and

12 (2) unless the plaintiff proves that the economic
13 damages suffered resulted from conscious and fla-
14 grant disregard, rather than mere negligence, on the
15 part of the defendant.

16 (d) GOOD FAITH LIMITATION.—Damages in a Y2K
17 action may not be awarded, except for economic loss,
18 against any defendant who demonstrates that the defend-
19 ant exercised due diligence and reasonable care to prevent
20 or remedy the Y2K failure according to generally accepted
21 standards of care and effort in the business activity in
22 which the defendant was engaged.

23 **SEC. 6. SEVERAL LIABILITY.**

24 The liability of more than 1 defendant in a Y2K ac-
25 tion may be several but may not be joint.

1 **SEC. 7. APPOINTMENT OF SPECIAL MASTERS FOR Y2K AC-**
2 **TIONS.**

3 Any District Court of the United States in which a
4 Y2K action is pending may appoint a special master to
5 hear the matter and to make findings of fact and conclu-
6 sions of law in accordance with Rule 53 of the Federal
7 Rules of Civil Procedure.

8 **SEC. 8. LIABILITY RULES APPLICABLE TO PRODUCT SELL-**
9 **ERS, RENTERS, AND LESSORS.**

10 (a) GENERAL RULE.—

11 (1) IN GENERAL.—In any Y2K action, an infor-
12 mation technology product seller other than a manu-
13 facturer shall be liable to a claimant only if the
14 claimant establishes—

15 (A) that—

16 (i) the information technology product
17 that allegedly caused the harm that is the
18 subject of the complaint was sold, rented,
19 or leased by the information technology
20 product seller;

21 (ii) the information technology prod-
22 uct seller failed to exercise reasonable care
23 with respect to the information technology
24 product; and

1 (iii) the failure to exercise reasonable
2 care was a proximate cause of harm to the
3 claimant;

4 (B) that—

5 (i) the information technology product
6 seller made an express warranty applicable
7 to the information technology product that
8 allegedly caused the harm that is the sub-
9 ject of the complaint, independent of any
10 express warranty made by a manufacturer
11 as to the same information technology
12 product;

13 (ii) the information technology prod-
14 uct failed to conform to the warranty; and

15 (iii) the failure of the information
16 technology product to conform to the war-
17 ranty caused harm to the claimant; or

18 (C) that—

19 (i) the information technology product
20 seller engaged in intentional wrongdoing,
21 as determined under applicable State law;
22 and

23 (ii) such intentional wrongdoing was a
24 proximate cause of the harm that is the
25 subject of the complaint.

1 (2) REASONABLE OPPORTUNITY FOR INSPEC-
2 TION.—For purposes of paragraph (1)(A)(ii), an in-
3 formation technology product seller shall not be con-
4 sidered to have failed to exercise reasonable care
5 with respect to an information technology product
6 based upon an alleged failure to inspect the informa-
7 tion technology product—

8 (A) if the failure occurred because there
9 was no reasonable opportunity to inspect the in-
10 formation technology product; or

11 (B) if the inspection, in the exercise of rea-
12 sonable care, would not have revealed the as-
13 pect of the information technology product
14 which allegedly caused the claimant’s harm.

15 (b) SPECIAL RULE.—

16 (1) IN GENERAL.—An information technology
17 product seller shall be liable as a manufacturer of an
18 information technology product for harm caused by
19 the information technology product if—

20 (A) the manufacturer is not subject to
21 service of process under the laws of any State
22 in which the action may be brought; or

23 (B) the court determines that the claimant
24 would be unable to enforce a judgment against
25 the manufacturer.

1 (2) STATUTE OF LIMITATIONS.—For purposes
2 of this subsection only, the statute of limitations ap-
3 plicable to claims asserting liability of an informa-
4 tion technology product seller as a manufacturer
5 shall be tolled from the date of the filing of a com-
6 plaint against the manufacturer to the date that
7 judgment is entered against the manufacturer.

8 (c) RENTED OR LEASED PRODUCTS.—Any person
9 engaged in the business of renting or leasing an informa-
10 tion technology product (other than a person that is an
11 information technology product manufacturer or a seller
12 liable as a manufacturer under paragraph (1)) shall be
13 subject to liability in a Y2K action, but any person en-
14 gaged in the business of renting or leasing an information
15 technology product shall not be liable to a claimant for
16 the acts of another solely by reason of ownership of such
17 information technology product.

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