point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 236, nays 188, not voting 9, as follows:

[Roll No 123]

YEAS—236

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Cubin
Cunningham
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Holt
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCarthy (NY)
McCollum
McCrery
McHugh
McInnis
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Paul
Pease
Peterson (MN)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thune
Tiahrt
Toomey
Traficant
Upton
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NAYS—188

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barcia
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank (MA)
Frost
Gejdenson
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pickett
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Smith (WA)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Tanner
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOT VOTING—9

Barton
Brown (CA)
Engel
McIntosh
Napolitano
Peterson (PA)
Scarborough
Slaughter
Thornberry

□ 1147

Mr. MALONEY of Connecticut changed his vote from ''yea'' to ''nay.''

Mr. FORD changed his vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 775.

The SPEAKER pro tempore (Mr. EWING). Is there objection to the request of the gentleman from Virginia?

There was no objection.

YEAR 2000 READINESS AND RESPONSIBILITY ACT

The SPEAKER pro tempore. Pursuant to House Resolution 166 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 775.

□ 1152

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 775) to establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentlewoman from California (Ms. LOFGREN) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

As we all know, the end of the millennium is rapidly approaching, and rather than looking ahead to the promise and possibility of the 21st century, Americans are approaching it with concern.

They are fearful because January 1, 2000, will bring with it the Y2K computer bug, a result of the decision made in the 1960s by computer programmers to design software that recognized only the last two digits rather than the full four digits of dates in order to conserve precious computer memory.

When the clock turns from December 31, 1999, to January 1, 2000, some computers will interpret ''00'' to mean that the date is 1900 rather than 2000. With dates being critical to almost every layer of our economy and across vast numbers of industries, systems that are noncompliant will disrupt the free flow of information that forms the underpinnings of our Nation's economy.

Many Y2K computer failures could occur weeks and months before January 1, 2000, and the barrage of Y2K lawsuits has already begun. CNETnews.com has reported over 80 Y2K lawsuits already filed, with 790 demand letters for new Y2K suits issued.

These legal obstacles are preventing good-faith efforts toward fixing Y2K computer problems. We are fighting the clock; we should not also be fighting an unnecessarily hostile legal environment.

It has been estimated that Y2K litigation could cost $2 to $3 for every dollar spent on actually fixing the problem. Y2K litigation cost predictions range from $300 billion to $1 trillion,

compared to just $15 billion for 1990's asbestos suits and $18.4 billion for Superfund suits.

These enormous costs could cripple our high-tech sector, diverting billions into litigation that should go to work force training, research and innovation and global competition.

Fear of lawsuits is stifling efforts to fix the Y2K problem. Corrective efforts by software engineers must be scrutinized and pre-approved by corporate legal divisions. Software consultants think twice before offering help for fear of incurring complete, joint and several, liability for systems they try to fix. Small business entrepreneurs face the impossible choice between spending funds for expensive Y2K fixes or saving cash for the potentially bankrupting litigation to come.

The Y2K glitch is not a partisan issue. It is a problem that could impact all Americans. Congress must act to address the problems that are currently discouraging businesses from addressing the Y2K problem and that will ultimately harm consumers.

The legislation we are considering today will continue the efforts which we initiated with the administration in the 105th Congress through the passage of the Year 2000 Information and Readiness Disclosure Act that furnished the first steps towards facilitating year 2000 remediation and testing.

Mr. Chairman, H.R. 775 is designed to implement a reform framework that will encourage a fair, fast and predictable mechanism for both plaintiffs and defendants for resolving Y2K disputes, ensuring that litigation will become the avenue of last resort, rather than the first option for settling institutes.

While it is estimated that American businesses have poured hundreds of billions of dollars into making the transaction to the year 2000, the simple reality is that some problems will go unresolved because of fear of litigation.

A basic premise of the bill is that contracts between suppliers and users will be fully enforceable in a court of law. All economic losses suffered by an individual or business as a result of a year 2000 failure, provided that their duty to mitigate damages was fulfilled, will be compensable. Claims brought by individuals or businesses based on personal injury are outside the scope of this legislation.

Further, the Act creates a pre-filing notification period intended to encourage potential plaintiffs and defendants to work together to reach a solution before they reach the courtroom. The pre-filing notification period requires potential plaintiffs to give written notice identifying their Y2K concerns and provide potential defendants with an opportunity to fix the Y2K problem outside of the courtroom.

□ 1200

After receipt of this notice, the potential defendant would have 30 days to respond to the plaintiff stating what actions will be taken to fix the problem. At that point, the potential defendant has 60 days to remedy the problem. If the defendant fails to take responsibility for the failure at the end of the 30-day period, the potential plaintiff can file a Year 2000 action immediately. If the injured party is not satisfied once the 60 days have passed, he or she still retains the right to file a lawsuit.

There are also provisions encouraging alternative dispute resolution and offers in compromise language for nonclass-action suits. As a result, we expect that there will be more attention given to Y2K remediation and an elimination of many Y2K lawsuits.

Also included are provisions that apply a proportionate liability standard to damages caused by multiple actors, some of whom may not necessarily be parties to a Year 2000 action. A defendant found to be only 5 percent liable in causing a Year 2000 problem would only be responsible for 5 percent of the damages, not 100 percent liable.

Furthermore, the legislation minimizes the opportunities for those who may try to exploit the unknown value of potential Y2K failures and pursue litigation as a first resort rather than permit the parties to resolve problems.

This bill contains provisions that will make sure that businesses are confident that they can spend their dollars fixing the Y2K problem rather than reserving those dollars for costly lawsuits that will increase costs for consumers, push small innovative businesses into extinction, and endanger, and in some instances eliminate, many American jobs.

The bill grants original jurisdiction to Federal District Courts for any Year 2000 class action where certain diversity requirements are met. Punitive damages in a Year 2000 action are capped at $250,000, or three times the amount of actual damages, whichever is greater, except for businesses with fewer than 25 employees, including State and local government units or individuals whose net worth is no greater than $500,000, wherein punitive damages are capped at the lesser of $250,000, or three times the amount of actual damages.

Since 1996, there have been more than 50 bipartisan hearings in the Congress examining a wide-ranging array of issues that are directly related to the Y2K challenge that is facing our global economy. We have listened to computer users and to industry, and what we have consistently heard is that small and large businesses are eager to solve the Y2K problem. Yet many are not doing so primarily because of the fear of liability and lawsuits. The potential for excessive litigation, and the negative impact on targeted industries are already diverting precious resources that could otherwise be used to help fix the Y2K problem.

My substitute aims to eliminate those fears and hasten the repair of Y2K problems while we still have time to resolve them. I should say the bill that is now on the floor. I urge my colleagues to support this important legislation.

Mr. Chairman, I provide for the RECORD a letter dated May 10, 1999, to the chairman of the Committee on the Judiciary from the chairman of the Committee on Commerce regarding H.R. 775:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, May 10, 1999.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR HENRY: I am writing with regard to H.R. 775, the Year 2000 Readiness and Responsibility Act.

Although the Committee on Commerce did not receive a named additional referral of H.R. 775 upon introduction, the Speaker has nevertheless granted my Committee a sequential referral of the bill. This sequential referral results from provisions in the introduced legislation within the Commerce Committee's jurisdiction pursuant to Rule X of the Rules of the House of Representatives. As you know, during the markup of H.R. 775, your Committee adopted amendments which eliminate the Commerce Committee's jurisdictional concerns over these provisions.

Because of the importance of this legislation, I recognize your desire to bring it before the House in an expeditious manner. I will therefore agree to discharge the Commerce Committee from further consideration of H.R. 775. By agreeing to waive its consideration of the bill, however, the Commerce Committee does not waive its jurisdiction over H.R. 775. In addition, the Commerce Committee reserves its right to seek conferees during any House-Senate conference that may be convened on Y2K legislation. I ask for your commitment to support any such request with respect to matters within the Rule X jurisdiction of the Commerce Committee.

I request that a copy of this letter be included as part of the record during consideration of the legislation on the House floor.

Sincerely,

TOM BLILEY,
Chairman.

Mr. Chairman, I reserve the balance of my time.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri (Mr. GEPHARDT), the minority leader.

(Mr. GEPHARDT asked and was given permission to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Chairman, the technology industry has been a prime driver in the robust economic growth that we have seen in the last several years. I think it is our responsibility to see that the Y2K problem does not slow down this engine of growth in our economy.

Democrats have put forward a substitute bill cosponsored by the gentlewoman from California (Ms. ZOE LOFGREN), the gentleman from Michigan (Mr. JOHN CONYERS), and the gentleman from Virginia (Mr. RICK BOUCHER) which addresses the Y2K litigation problem in a responsible, sensible, and adequate manner. The Clinton administration supports this substitute.

We need to do something but we do not need to take steps that will dismantle key protections for consumers

and small businesses that is represented in H.R. 775. The Lofgren-Conyers-Boucher substitute is a responsible alternative that would allow businesses to take the necessary steps to enhance readiness and assist customers to deal with the Y2K bug. The Democratic substitute would create incentives for Y2K compliance, weed out frivolous Y2K claims while allowing meritorious ones to go forward, and encourage alternatives to litigation.

I applaud the gentlewoman from California (Ms. ANNA ESHOO), who is a key leader on technology issues, who understands that H.R. 775 is not the solution to the problem and who is trying to find a compromise that will provide the protections that both industry and consumers deserve.

Some Republicans are using the sledgehammer approach to this issue. Instead of trying to fashion a responsible solution to a real problem, they are trying to create a divisive issue where one need not exist. We do not need a campaign issue, which I am afraid is the way some of my Republican colleagues are approaching the problem. We need a real bipartisan solution that the President will sign.

We can come up with a better way than H.R. 775. Let us address the problem, not make it worse. Vote against H.R. 775 and support the common sense Lofgren-Conyers-Boucher substitute.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS).

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Virginia (Mr. GOODLATTE), the manager of this bill, for his courtesy in allowing me to speak at this time.

Mr. Chairman, I rise to urge that the words of the minority leader, the gentleman from Missouri (Mr. GEPHARDT), be considered.

The problem, essentially, is that the committee-passed version of this bill goes way beyond the stated needs of the high-technology community and is probably being used as a precedent for more broad-ranging tort reform.

The problems are these: The bill eliminates the possibility of damage recovery whenever a defendant exercises ''reasonable efforts'' to fix a computer defect, even if his efforts are unsuccessful.

Secondly, the limits and caps on punitive damages are unnecessary and unrequired. We put caps on officers' and directors' liabilities. We federalize class actions. We eliminate joint and several liability and then further mandate a loser-pay mechanism.

I want to suggest to my colleagues that the wave of 80 lawsuits already filed is not a flood of litigation that we need to be unduly concerned about.

I also want to say that I have regretted that the amendment of my colleague, the gentleman from Michigan (Mr. EHLERS) was not put in order. It cut off any claims against Y2K compliance from 1995 forward, because the damage has been known for many, many years. The potential damage. I think this has been overmagnified.

I want to praise the gentlewoman from California (Ms. LOFGREN) and my colleague, the gentleman from Virginia (Mr. RICK BOUCHER) for the work they have done in helping carve out a reasonable substitute that will escape administration veto.

Now, inadvertently, the bill eliminates incentives to remediate Y2K problems and the bill now sweeps in millions, potentially, of consumers into the Y2K litigation relief package. So, please, let us all be as reasonable as possible.

We are proud to support the high-tech community in their problems, and we want to work them out, but let us not overdo it. Support the substitute and let us hope, then, we will get a bill that will pass administration muster.

Again, Mr. Chairman, I thank the gentleman from Virginia and I compliment the gentlewoman from California (Ms. LOFGREN) that is managing the bill on our side.

As presently written, ''The Y2K Readiness and Responsibility Act,'' which I prefer to call the ''Y2K Industry Overreaching Act,'' is nothing more than another poorly crafted product liability reform effort, disguised as legislation to address the Y2K problem. Much of the bill is left over from the discredited ''Contract with America,'' which has already been rejected by Congress and the American people.

I am not averse to legislation that specifically and narrowly addresses the problems faced by the high tech community. However, the bill reported by the committee goes well beyond reasonable reform. In fact, Assistant Attorney General Eleanor D. Acheson has testified that ''. . . this bill would be by far the most sweeping litigation reform ever enacted. This bill would harm technology users, and is bad for consumers and small businesses. Worst of all, instead of creating positive incentives to fix problems, it creates new reasons to avoid remediation.

First, the legislation would harm technology users because by providing across the board caps and limitations on liability, H.R. 775 will make it more difficult for businesses suffering computer failures to obtain compensation. Kaiser Permanente has written that the legislation ''unfairly prejudices (or completely bars) the ability of the health care community to recover costs associated with any potential personal injury or wrongful death award from the entity primarily at fault for the defect that caused the injury.'' Those businesses who have had the foresight to cure their own Y2K problems will also be negatively impacted, since the bill will allow their competitors to obtain the same legal benefits without incurring remediation costs.

The legislation is also bad for consumers and small businesses. Even though the Y2K problem has been overwhelmingly described as a business to business issue, H.R. 775 sweeps in tens of millions of individual consumers with little opportunity to protect themselves by contract. Further, the ''loser pays'' provision is totally inconsistent with the notion of equal justice and will also work to the significant disadvantage of individuals and small businesses. This is because in order to bring their case to trial, an individual or small business must risk reimbursing a large corporation for its legal fees. Under this provision, if a harmed party guesses wrong by a mere $1, even if he or she wins the case, they could be liable to pay the wrongdoers legal fees.

The legislation also eliminates incentives to remediate Y2K problems. The ''reasonable efforts'' defense is so broad it would even cover intentional wrongdoing or fraud, so long as the misconduct was eventually papered over by any sort of post-hoc reasonable effort. Even if a defendant takes minimal steps to remedy a Y2K problem, it will serve as a complete defense against a tort action, thereby undercutting incentives to prepare for and prevent Y2K errors. In addition, the bill's punitive damage restrictions provide the greatest amount of liability protection to the worse offenders and those who have done the least to solve their Y2K problems, while the limitations on directors and officers liability will protect irresponsible and reckless behavior.

Given the evidence we have so far, it is impossible to justify such a complete reworking of our state civil justice system to accommodate a single industry. I would remind the Members that a recent New York Times article noted that ''so far the cases offer little support for the dire predictions that courts will be choked by litigation over Y2K.'' Even high tech executives have questioned the magnitude of the problem, with Jim Clark, the co-founder of Netscape Communications and Silicon Graphics stating, ''I consider [Y2K] a complete ruse promulgated by consulting companies to drum up business . . . the problem is way overblown [and is] a good example of press piling on.''

However, I do believe it is possible to achieve a reasonable middle ground on this issue. Democrats have a long track record of working with the high tech community in order to maintain American leadership in information technology and preserve and foster American jobs. We have been out front in supporting copyright reform, patent reform, encryption reform and state tax reform, to name but a few recent initiatives. Just last Congress we strongly supported the Readiness Disclosure Act, which protected high tech companies from Y2K disclosure liability.

We are ready, willing and able to work with the interested parties on the Y2K problem as well—but only if all sides are willing to be more realistic and practical in their goals. A substitute Ms. LOFGREN, Mr. BOUCHER, and I plan to offer today will be a good faith effort to achieve this goal. But I cannot support the bill as it is presently written, and I must urge a No vote.

Mr. GOODLATTE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLEY).

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, I rise in strong support for H.R. 775, the Y2K Readiness and Responsibility Act. The Y2K transition presents a very unique set of challenges, and that is why I am pleased to be a cosponsor of this legislation which has developed a very specifically and

narrowly crafted piece of legislation targeted to address this one-time situation.

H.R. 775 embodies a few key principles: Accountability, fairness and predictability. It represents a strong bipartisan effort targeted at addressing the potential Y2K challenges facing our Nation's businesses, consumers and public agencies by providing incentives and resources to ensure that businesses continue with their mitigation efforts. The bill also develops a roadmap for navigating potential Y2K glitches that may occur after December 31, 1999.

The reason we need to do this is because some people have estimated that it might cost over $50 billion to fix Y2K problems. We need to continue to see these efforts move forward, but we also need to have a process put in place to ensure that we can resolve disputes should they occur.

Since cosponsoring this legislation, I have had the opportunity to meet with constituent groups and business leaders representing all sectors of our economy, including representatives from the financial service sector in New York and high-tech leaders in Silicon Valley in Seattle. And whether I was talking to small business owners or consumers, technology executives or Wall Street traders, they all delivered the same message and expressed the same concerns regarding Y2K challenges: First, they are committed to fixing any potential problems associated with Y2K and are investing all necessary resources to prevent Y2K failures.

Second, they want to be treated fairly. Many of them are both potential plaintiffs and defendants. They want assurances that potential problems will be fixed quickly and with minimal disruptions. They also want to ensure that they will be accountable for remedying their share of potential problems that develop and not expected to cure problems which they have no responsibility for.

And third, they are looking for some level of predictability. Businesses and consumers alike are troubled by the current atmosphere of uncertainty and are looking for a predictable process to remedy potential Y2K problems and to mediate Y2K disputes.

The high tech industry, which has been the driving force in our nation's unprecedented economic growth, is solidly supporting this legislation. Every major technology association, including: the Information Technology Industry Council; the Information Technology Association of America; the Semiconductor Industry Association; the Software Information Industry Association; the Business Software Alliance; the Telecommunication Industry Association; The American Electronics Association; the Computing Technology Industry Association; Technology Network; the National Association Computer Consultant Business; and the Semiconductor Equipment and Materials International have endorsed H.R. 775. These associations represent a broad section of companies, ranging from the smallest start-ups to industry leaders, but they are unified in support of our legislation because it will encourage mitigation above litigation, and will ensure the continued robust growth of the U.S. economy.

I am also concerned that some may resort to litigation alleging Year 2000 failures against parties that truly bear no responsibility for any Y2K failure in a consumer product. I know that sometimes plaintiffs will sue parties for their deep pockets, and even when there is no liability, defendants wind up absorbing the cost of the litigation. I believe the legislation before us takes sound steps to curb this problem. In particular, it seems to me that when a retail seller or lessor of a computer product does no more than sell the product in the packaging in which it was received, and does not do anything to that product that affects the Year 2000 compliance, that seller or lessor should not be subject to liability in a Year 2000 case. I believe that the language of the legislation addressing the case where the defendant has sole control of the product, Section 301(1), properly provides for such a result.

Make no mistake. The Y2K Readiness and Responsibility Act holds businesses and individuals responsible for their products and their actions. It ensures that individuals and companies who experience Y2K problems have their problems fixed as quickly and orderly as possible, and that they recover any economic loss that results from Y2K failures. There are no limits on economic damages, so plaintiffs are eligible to receive all potential economic losses resulting from Y2K problems.

Like the securities litigation reform legislation that was enacted in the last Congress, the Y2K Readiness and Responsibility Act makes sure people are responsible for the share of any Year 2000 problem they cause, not problems caused by others. The Y2K Readiness and Responsibility Act would assign proportional liability for Y2K problems and failures.

Our legislation encourages mitigation and remediation over litigation by creating a 90 day cure period to fix the problem before resorting to litigation. The legislation would require the submission of a written notice outlining the Y2K problem, give the defendant 30 days to propose a remedy to the problem, and would allow the plaintiff to sue if a plan had not been put forward within the 30 day period or within 90 days if they were not satisfied with the defendant's remediation offer. In addition, the bill promotes the use of Alternative Dispute Resolution.

Some have argued that there is no demonstrated need for the legislation. In fact, Y2K litigation is already on the rise. According to a recently published story in Time magazine, the filing of Y2K lawsuits has increased dramatically with at least 78 suits filed to date and nearly 800 legal disputes in the process of formal negotiation. Lloyds of London insurance has projected that worldwide claims could exceed $1 trillion, which would prove to be a considerable drain on our strong economy by diverting resources from investment, research and income growth.

We all hope that when the New Year comes that the investment in Y2K fixes will have paid off and that we will be faced with relatively few problems. The Y2K Readiness and Responsibility Act simply establishes a set of ground rules to minimize the potential effects of Y2K problems of businesses and consumers alike if failures do occur.

Mr. Chairman, I urge my colleagues to join me in supporting this legislation.

Ms. LOFGREN. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia (Mr. BOUCHER).

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Chairman, I thank the gentlewoman from California for yielding me this time.

Today, Mr. Chairman, we will debate the approach that should be taken by the Congress to address the problems associated with the Y2K computer transition. These problems are real, and those on this side of the aisle share the concerns of the technology community that an addressing of these concerns by the Congress should be provided.

I think the national interest will be well served through the adoption by the Congress of a framework through which Y2K problems can be presented and repairs made. Where repairs cannot be made, that framework should lead to the provision of appropriate damage payments.

As we build that framework for the Y2K transition, it is important that we keep our focus on the actual unique circumstance that has been presented to the Congress. We must avoid the temptation to use the Y2K problem for the creation of a template to enact overly-broad legislative restrictions on litigation that would then be applied by future Congresses in other subject matter areas.

I would ask the Members to bear in mind that we have a limited amount of time within which to pass this measure. For most legislation we have a longer time horizon, but this measure will only carry the protections we hope to extend if it is in place before the end of this year.

Given the press of appropriation bills, which are immediately pending, we really have a very narrow window within which to act. And to act within that narrow time calls for a narrow measure, one that meets the legitimate needs of the companies that will be the subject of Y2K suits and one that is limited just to those legitimate needs.

I have been pleased to work closely over the course of the past month with the gentlewoman from California (Ms. LOFGREN) and the gentleman from Michigan (Mr. CONYERS) as we have structured a substitute that does meet those legitimate needs. Today, we will be offering that substitute.

□ 1215

Our substitute will be a major help to all of the affected parties in making the Y2K transition. It is narrowly targeted to meet the needs that have been presented. It will not impose overly broad limits on litigation. It can be signed into law within the narrow window of opportunity that is present to us.

As the Members consider H.R. 775, as reported from the committee, which, in my opinion, is overly broad, I will urge

the Members on both sides of the aisle to also carefully consider the substitute that we are putting forward and to choose that approach that is best structured to solve the actual problems that have been presented and that can be enacted at the earliest possible time. Only our substitute meets that test.

Mr. GOODLATTE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, on December 31, 1999, as that big ball comes down in Times Square, we will be faced with a very real problem that demands a real response from the business community. Knowing of these potential disasters and the time constraint with which we are faced, one would assume that businesses are now laboring feverishly to correct the problem that may result with a single-minded focus. But this has not been the case, unfortunately.

Instead of taking a more active approach to solving the Y2K problem, many businesses find themselves expending time and energy on liability issues. In large corporations, the work of software engineers has to be rigorously examined and approved by legal departments. Small entrepreneurs, on the other hand, are faced with the dilemma of funding extensive Y2K-compliant changes or saving for potentially bankrupting legislation and litigation.

Given these circumstances, American society could be confronted by an extended period of challenging technological and economic issues; and that is why I have cosponsored this legislation, H.R. 775, and why I rise today in support of its passage.

This bipartisan legislation creates incentives for businesses to address the impending Year 2000 problem by creating a legal framework in which Y2K-related disputes will be resolved. The emphasis is placed on mediation and cooperation over litigation. Businesses are encouraged to help each other solve potential problems, rather than sue over something that could have been averted.

Finally, the legislation provides entrepreneurs and small businesses with access to small business administration loans for Y2K modification projects. We must not permit a climate to foster in which businesses paralyzed by a fear of unrestrained lawsuits fail to take action that would adequately address the problem. And this bill allows businesses to focus their efforts on finding real solutions, rather than anticipating out-of-control lawsuits that only serve to aggravate the situation.

The Year 2000 Readiness and Responsibility Act is critical in helping consumers and businesses that may be impacted negatively if the Y2K problem is not resolved in a timely and efficient manner. The Congressional Budget Office indicates that this would save money for the government if we pass this and for the taxpayers. Therefore, I urge my colleagues to vote for its passage today.

Mr. BOUCHER. Mr. Chairman, I am pleased to yield such time as he may consume to the gentleman from Massachusetts (Mr. DELAHUNT).

(Mr. DELAHUNT asked and was given permission to revise and extend his remarks.)

Mr. DELAHUNT. Mr. Chairman, well, here we go again, crafting public policy without a clue as to why or what we are really doing; and the American people should be aware of it.

Just last week, we passed a bankruptcy reform bill based on dubious assertions by the credit card industry that the bill would result in lower costs to consumers. One industry-funded study said that the bill would save the average household over $400 per year; and this figure found its way into every witness statement and ''Dear Colleague'' letter, as though it were an established fact.

It was also routinely cited in press accounts, even after the study was flatly contradicted by a chorus of consumer advocates and bankruptcy experts, even after the Congressional Budget Office and the General Accounting Office were unable to substantiate the figure, even after every witness at a subcommittee hearing admitted that corporate cost savings would not be passed on to consumers in the form of lower interest rates.

And today we are at it again. We are considering legislation that would exempt large businesses from any liability for Year 2000 failures for which they are, in fact, responsible. And, once again, we are presented with a headline-grabbing assertion, ''pass this legislation or American companies will face $1 trillion in litigation costs.''

Well, $1 trillion is serious money, Mr. Chairman. But where is the evidence? Where does that estimate come from? I asked that question repeatedly in committee; and I never received an answer, never. But, later on, I asked one of our witnesses who looked into the matter; and I want to read into the RECORD his account of where that number came from.

The one-trillion-dollar figure emanated from the testimony of Ann Coffou, Managing Director of Giga Information Group, before the U.S. House of Representatives Science Committee on March 20, 1997, during which Ms. Coffou estimated that the Year 2000 litigation costs could perhaps top $1 trillion. Ms. Coffou's estimate was later cited at a Year 2000 conference hosted by Lloyds of London and immediately became attributable to the Lloyds organization rather than the Giga Group.

Obviously, those who want to use the trillion-dollar estimate for their own legislative purposes prefer to cite Lloyds of London rather than the Giga Group as the source of this estimate. There has been no scientific study and there is no basis other than guesswork as to the cost of litigation. This so-called trillion-dollar estimate by the Giga Group is totally unfounded but once it achieved the attribution to Lloyds of London, the figure became gospel and is now quoted in the media and legislative hearings as if this unscientific guess by this small Y2K group should be afforded the dignity of scientific data.

A guess, Mr. Chairman. That is what this legislation is based on, a guess, a guess that has acquired the status of an accepted fact through nothing more than repetition.

Now, I know this is old fashioned, but before we proceed to confer blanket immunity on those who fail to act responsibly, I think we should have something more than a guess. And before we deprive consumers and small businesses of compensation for the losses they will sustain if their computers do not work, I think we should have something more than a guess. And before we override centuries of common law, both at the State and Federal level, both substantive and procedural, I think we should have something more than a guess.

We are told that this bill is necessary to encourage businesses to take the necessary steps to avert or minimize the Year 2000 problem. The Lofgren-Boucher-Conyers substitute does just that. Yet the underlying bill, by removing the threat of liability, discourages and undermines the incentive that companies have to do so to bring their problems into compliance. And it is the American people who will be left holding the bag on January 1.

The bill discourages compliance. It benefits the large multinational corporations, to the detriment of small business and the individual consumer. This bill ought not to pass, and I urge support for the substitute offered by the gentleman from Virginia (Mr. BOUCHER), by the gentlewoman from California (Ms. LOFGREN), and by the gentleman from Michigan (Mr. CONYERS), the ranking member on the committee.

Mr. GOODLATTE. Mr. Chairman, I yield 30 seconds to the gentleman from Virginia (Mr. DAVIS), the author of the bill.

Mr. DAVIS of Virginia. Mr. Speaker, just to clear a couple things up, small businesses support this legislation. The National Federation of Independent Businesses is scoring this as a key vote. They represent both potential plaintiffs and defendants in these actions.

Secondly, nothing here we are doing disallows a consumer or an injured party from suing for full damages. What they do not get are massive punitive damages. They can get up to $250,000 in non-economic damages and three times actual damages. But they are not barred, as some State legislatures do, from collecting damages. Some States treat this almost as an act of God where they get nothing. So I think that clarification is important.

Mr. GOODLATTE. Mr. Chairman, I yield 3 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

(Mrs. BIGGERT asked and was given permission to revise and extend her remarks.)

Mrs. BIGGERT. Mr. Chairman, I rise to speak today in favor of House Resolution 775, the Year 2000 Readiness and

Responsibility Act; and I commend the gentlemen from Virginia for their leadership on the Y2K liability issue.

In my former life in the Illinois State Legislature, I also drafted a liability bill for the Year 2000. When I came to Congress, I thought I had left Y2K behind. However, as they say, the more things change, the more they stay the same.

As the Vice Chairman of the Subcommittee on Government Management, Information and Technology, I have participated in a series of hearings on Y2K compliance at Federal agencies. I believe that, largely because of congressional attention, our Federal agencies will be ready for the Year 2000 date change. But will our Nation's small and large businesses be ready?

Many of our Nation's lawyers are gambling that they will not. Dozens of Y2K-related lawsuits already have been filed in the United States, and estimates of the total costs associated with the Y2K litigation approach $1 trillion. Comparatively, the total annual direct and indirect costs of all civil actions in the United States is estimated at $300 billion.

The Y2K computer date change will affect every business, consumer, local government and school. When we wake up on January 1 of the year 2000, we need the continued computer capacity of water and sewage plants, utilities, gas stations, pharmaceutical companies, hospitals and local traffic lights.

Absent this bill, I strongly believe that the threat of Y2K liability has the potential to discourage effective actions on Y2K compliance. We must, instead, encourage plaintiffs and defendants in Y2K legal actions to work together to find solutions to the Y2K problem. The bill encourages Y2K fixes but discourages Y2K lawsuits by encouraging alternative dispute resolution, placing limitations on damages and requiring pretrial notice.

American businesses are already investing up to $1 trillion to ready their computers so that we can enter our new millennium as smoothly as we leave the old. Instead of preparing for liability, small businesses especially need to work together, share information and solve Y2K problems before the end of the year. For, as we all know, the year 2000 will not wait.

I urge my colleagues to support this legislation on behalf of workers, consumers and businesswomen and men.

Mr. BOUCHER. Mr. Chairman, I ask of the Chair the amount of time remaining for both sides?

The CHAIRMAN (Mr. LAHOOD). The gentleman from Virginia (Mr. BOUCHER) has 15 minutes remaining. The gentleman from Virginia (Mr. GOODLATTE) has 13½ minutes remaining.

Mr. BOUCHER. Mr. Chairman, I am pleased to yield such time as he may consume to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Chairman, I represent the Central Texas area, where high technology has really provided the engine for the unprecedented economic growth that we have experienced.

I want to support reasonable legislation that will benefit that industry and our community, but I really do not believe that this is it. I have the greatest respect for my colleague (Mr. DAVIS of Virginia), with whom I am in general agreement on technology issues. But on this particular issue, I believe that there is a bit of overreaching that gets us into some really serious problems.

□ 1230

The exclusion by the Committee on Rules in this debate of the amendment by our Republican colleague Mr. EHLERS and of several proposals by the gentleman from Virginia (Mr. SCOTT) suggests that the debate is designed to force an up or down vote on a version of this bill that does much more than is necessary to protect the technology community.

As a former State court judge, I am particularly concerned by the unequivocal rejection of provisions of this bill by the Judicial Conference of the United States. That is a body composed largely of Federal judges appointed by Presidents Reagan and Bush. This bill takes what the Judicial Conference describes as a ''radically different approach'' with ''the potential of overwhelming Federal resources and the capacity of the Federal courts to resolve not only Y2K cases, but other causes of action as well.''

The United States Department of Justice has likewise opposed this extreme measure, noting that ''even a defendant who recklessly disregarded a known risk of Y2K failure could escape liability.'' The Department of Justice also opposes this bill because it ''would preclude federal and state agencies from imposing civil penalties on small businesses for first-time violations of federal information collection requirements.''

Most of the reasonable provisions of this proposal, and there are a number of reasonable provisions, are so reasonable that they are already the law in Texas and in most other places: penalties against anyone who brings a frivolous lawsuit, a requirement of adequate notice to someone who is going to be sued, a cooling-off period, an opportunity for a wrongdoer to cure the wrong, a duty for the victim to undertake reasonable steps to mitigate or minimize damage, and the use of mediation or alternative dispute resolution to avoid a lengthy jury trial. To the extent that there may be some deficiency in the laws of the States, the State legislatures are the place to deal with these kind of problems, and they are dealing with them.

That is why we have legislatures convene in places like Austin, Texas, where the Texas Legislature is sitting today. And only last week, the Texas Legislature unanimously sent to Governor George W. Bush a proposal that he supports that deals in a much less expansive way with this whole Y2K issue. I increasingly hear that my Republican colleagues are pretty enamored with George W., and I would just ask if he is good enough for you, why is his Y2K bill not good enough for them? Instead, by preempting Texas law, by overriding and essentially saying to the Texas legislature and our Texas governor that on Y2K, you are nuts, we are suggesting in this legislation that the good people of Texas or Florida or Minnesota or anywhere else in the country should yield to the alleged wiser wisdom of Washington. I think that that is the false premise of this bill.

As we look back over history a thousand years to the beginning of the current millennium, there were many apocalyptic visions of what might happen about this world. Today, a variety of people are approaching the new millennium with similar grave concern. Jerry Falwell, who believes the end is near, is predicting ''a possibility of catastrophe.'' There is a dark vision of the millennium at the Planet Art Network where you can get your galactic signature decoded and learn the real cause of Y2K. And there are a group of people, including some not far from where I live in Texas, that are stocking up on canned goods and bottled water, heading for the hills and abandoning the community in anticipation of all the ill that will flow in the millennium change.

Today we see the legislative view of this survivalist approach to Y2K. This is law making, which really fails to build on a bipartisan approach, but instead employs a measure that is opposed by every Democrat and one Republican and supported by every other Republican on the Judiciary Committee. Rather than trying to come together and find some true middle ground on addressing this Y2K issue, this bill really is attempting to set a precedent for undermining in other types of civil cases trial by jury, which represents one of the most valued rights shared by American citizens. This bill will encourage irresponsibility rather than responsibility; it does not represent the appropriate way to address the Y2K issue.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding. My question is, the gentleman is not suggesting that the governor of Texas is opposed to this legislation, is he?

Mr. DOGGETT. I am suggesting that the governor of Texas has fulfilled his responsibility in calling for Y2K action in Texas, in building a consensus that produced a bipartisan bill approved unanimously by the legislature. If he provided such good leadership, why do we not follow that leadership in Texas instead of as your bill does, preempting, overriding and disregarding that action?

Mr. GOODLATTE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. GARY MILLER).

(Mr. GARY MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. GARY MILLER of California. Mr. Chairman, I am not here today to talk about the Book of Revelation or the end of time. I rise in strong support of H.R. 775, the Year 2000 Readiness and Responsibility Act.

I want to thank the gentleman from Virginia (Mr. DAVIS), the gentleman from Virginia (Mr. MORAN), the gentleman from California (Mr. DREIER), the gentleman from Alabama (Mr. CRAMER), the gentleman from California (Mr. COX) and the gentleman from California (Mr. DOOLEY) for their leadership on this issue.

This bipartisan bill is our opportunity to provide critically needed protections for consumers and businesses to ensure that Y2K computer problems are addressed quickly and that precious resources are not squandered on needless litigation. To minimize the impact of the Y2K bug, American businesses are currently investing $600 billion and working diligently towards reprogramming and replacing their affected computer systems. Unfortunately there is no easy technological fix for this problem. Each computer must be meticulously fixed, tested and retested. Opportunistic individuals are only adding to an already almost insurmountable task by diverting attention and needed resources away from fixing the problem, with litigation.

To date, over 80 Y2K lawsuits have been filed and there are 790 letters demanding new Y2K litigation. It is estimated that unrestrained litigation could cost $1.4 trillion. That would only serve to line the pockets of greedy opportunists at the expense of American jobs.

H.R. 775 is a very reasonable approach to preventing an explosion of Y2K litigation. This bill favors remediation over litigation by encouraging parties to resolve their differences outside of the expensive court system through alternative dispute resolution. It also places the focus of Y2K problem solvers on a solution rather than fighting in court. At the same time H.R. 775 does not eliminate the normal legal options. Americans who suffer economic or physical injuries as a result of Y2K can still recover 100 percent of their actual damages. Many Y2K computer failures could occur weeks and months before January 1, 2000. That is why it is so important that we pass this legislation immediately and remove the legal obstacles that are preventing good faith efforts toward fixing the Y2K computer problem.

Mr. BOUCHER. Mr. Chairman, I yield 1 minute to the gentleman from Texas (Mr. STENHOLM).

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, I thank the gentleman for yielding me the time. I rise in strong support of this legislation. We are just 200 days now away from the turn of the century. A lot of concern is being brought about what happens then. But sadly there are some folks that are, I think, unfortunately looking for ways to make money off the turn of the century. Today this bill is designed to keep that from happening.

This legislation we are voting on will reduce frivolous Y2K lawsuits by promoting remediation instead of litigation. In other words, it encourages people to work out their legitimate problems and claims outside of the courthouse, whenever possible, and still preserve the right of folks who suffer real injuries associated with the Y2K problem to file suits and to go through our judicial system when necessary. The bill also creates incentives to fix problems before they happen.

This meets what I like to call the west Texas tractor seat, common sense approach to a very real problem. I encourage my colleagues to support this legislation.

Mr. GOODLATTE. Mr. Chairman, I yield 1½ minutes to the gentleman from Florida (Mr. STEARNS).

Mr. STEARNS. Mr. Chairman, I rise in strong support of this legislation. If we expect American businesses to continue their global leadership in innovation, productivity and success to drive our economy and create new jobs, they must be given the tools to allow them to compete. One of the fundamental tools of success and competition in the American economy and the high tech community is being free from the burdens of opportunistic lawsuits which are clearly designed to harm American businesses. H.R. 775 does this by placing caps on punitive damages, creating a waiting period on lawsuit filings and establishing a loser pay system.

Unless we establish liability protections, many if not most of American businesses will be hesitant to solve any Y2K problems for fear of lawsuits. Let us do what is the right thing here, Mr. Chairman, and pass this bill overwhelmingly.

Mr. BOUCHER. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time. I will not consume all that time, but I felt it necessary to respond to the primary sponsor for whom I have great respect, the gentleman from Virginia (Mr. DAVIS), when he talks about small businesses.

I would like to point out just one particular aspect of this proposal that will hurt small businesses. This goes to the issue of economic loss. If a small business under the provisions of this bill should incur a disruption in the course of its business because of the negligence of another party because of the Y2K bug issue, that small business will not be entitled to losses such as lost profits, such as business interruption and other such consequential damages. I am not talking about frivolous lawsuits here. I am talking about lawsuits that are meritorious.

What this bill will do will disadvantage small businesses, because they do not in many cases have the financial wherewithal to take on the giants. Clearly the damages that they will be seeking is because their business will be hurt, in many cases will be devastated, and in many cases might very well end up in bankruptcy. So maybe the NFIB is scoring this, but I suggest a careful reading of this language will show that this bill harms small business as well as the consumer.

In addition, for those that have meritorious claims, we have changed the standard, we have changed the burden of proof on small businesses in their attempt to recover their legitimate and valid remedies. We have changed it from a mere preponderance of the evidence to now a totally different standard, one that is more akin to the criminal law. It is just a short way from beyond a reasonable doubt, and, that is, clear and convincing evidence.

Let me suggest that the substitute offered by the gentleman from Virginia and the gentlewoman from California and the ranking member will address the issues that they are concerned about.

Mr. GOODLATTE. Mr. Chairman, I yield myself 45 seconds. I have some bad news for the gentleman from Massachusetts. The provisions of the Conyers-Boucher-Lofgren substitute related to economic losses are very similar. In fact, ours are more limited than theirs are with regard to that position. In addition, the White House in a letter that they submitted yesterday, signed by Bruce Lindsey and Gene Sperling, states,

> Many States have legal rules limiting the recovery of economic loss damages in certain tort lawsuits. These rules are designed to bar parties to contracts from avoiding contract limitations on liability by suing in tort. We would support statutory recognition of this rule as a way to limit frivolous Y2K claims, provided that the rule is limited appropriately so that it would not effectively prevent recovery in cases of fraud.

Ours is more limited than theirs.

□ 1245

Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. DAVIS), the principal sponsor of this legislation and my good friend.

(Mr. DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Virginia. Mr. Chairman, I thank my friend for yielding this time to me, and I have great respect for my colleagues on the other side in trying to get together on this issue because I think they recognize, and even the White House has come to recognize just in the last couple of days, that the fastest growing segment of the American economy, our technology sector, is jeopardized by an occurrence of an infusion of litigation on Y2K liability in this.

This is complicated. We can have a computer system that is Y2K compliant, but because it is so interconnected to other areas, even when we test it we will end up talking to other areas over the long term. We could not test that it could disrupt that system.

A clear and convincing standard is needed, frankly. I would make that argument as opposed to the old preponderance of the evidence where somebody is hurt and somebody pays.

That is what makes this so unique. That is why we are not trying to rewrite tort law in its entirety.

Mr. Chairman, I just address a few of the issues that have been raised on the other side.

We have heard the usual arguments about a sledgehammer approach, about extreme measures, but these are approaches that this House has voted for before, Members of both parties. We talked about a real bipartisan solution. What that means is something the President will sign, something the Trial Lawyers Association will agree to, something that they can try to please everyone.

But that does not solve the problem. The problem of those solutions is it does not get to the heart of what American companies are about to face. We are in a borderless economy, worldwide economy, today. Fastest growing segment of our economy: the technology sector that is jeopardized by lawsuits; and this jeopardizes whether it is a trillion dollars or whether it is tens of billions of dollars, which is what asbestos is. These are profits that could be channeled into new products to continue to keep American companies competitive in the global market place, and instead they are going to be bogged down in protracted litigation, in attorneys' fees and settlement costs that do not need to be.

Under our legislation, everybody who is injured gets their damages. They can prove it, they get their damages. They can even get three times their economic loss in punitive damages, or $250,000, whichever is the most. We are not depriving anyone of anything.

The gentleman from Michigan made a comment that reasonable efforts by the defendant will bar the incurrence of damages. That does not happen at all. It just caps punitive damages. It just takes away a doctrine, joint and several liability, that in this very interconnected world where we have embedded chips and the like and it is very difficult to place, allocate, blame, will not bring down large companies because they happen to have the deep pockets and because somebody else might have messed up a problem 25 years ago and they cannot find them today.

Even the administration in their letter recognizes that perhaps some use of proportional liability may be appropriate in this as long as the defendant could get full damages from the defendants that they could find. The language: We have to escape an administration veto.

We are not running cover for anybody here. We are trying to pass legislation. If we have this language, we never would have gotten the securities litigation damage where this House overrode an administration veto, or just a couple of years ago. What we want is commonsense litigation against the heart of this problem, and that is we are taking the fastest growing part of our economy, we are putting it in jeopardy, and what that does on the worldwide marketplace wherein other countries, they do not face the litigious society that we do here, where they can continue to grow and prosper and produce jobs and keep the economy humming.

Ironically, many of the individuals who oppose this legislation in the administration will not be here when we see the results of not enacting this legislation down the road. They will be blaming people who are then in office because of legislation that is passed today.

Our job is not to necessarily escape an administration veto, particularly in a bill that goes through the House for the first time. We overrode the administration on securities' legislation. We are not going to let the trial lawyers or any single interest group write this bill. Our job is not to provide cover to any political entity in this. It is to write a commonsense bill that gets the job done.

Small businesses are both plaintiffs and defendants in this. Small businesses are hurt if they cannot sue and get damages under the instances described by the gentleman from Massachusetts, but they can sue here and get full damages. They get their economic damages. They can get a modicum of punitive damages as well.

That is why the National Federation of Independent Business, the largest small business organization in the country, endorses this legislation. That is why the U.S. Chamber of Commerce, made up of large and small organizations, endorse this legislation. That is why I asked unanimous consent this be placed into the RECORD.

The credit unions now endorse this legislation, H.R. 775, because they are small businesses that recognize that, without this kind of relief, their businesses can be brought down, they can go bankrupt, and their customers and their employees are then out on the street.

I also will put into the RECORD a number of Chambers of Commerce and business entities and local groups from National League of Cities on.

CUNA & AFFILIATES
Washington, DC

MEMORANDUM

To: Governmental Affairs and Political Specialists.
From: Richard Gose and Karen Ward.
Re: Late Breaking News on Y2K and Gaps Conference Call, Wednesday, May 12th
Date: May 11, 1999.

LATE BREAKING DEVELOPMENT—HOUSE TO VOTE ON Y2K LIABILITY LEGISLATION TOMORROW, MAY 12TH

Today, the House Leadership decided to put H.R. 775, the Year 2000 Readiness and Responsibility Act, on the floor May 12th. According to the Rules Committee, the legislation will be considered under a ''modified closed rule.'' Six amendments will be voted on—CUNA urges Yes votes on three amendments: Davis (VA) which defines the types of damages recovered under the bill and changes the effective date of the legislation to January 1, 1999; Moran (VA) which exempts all claims arising from a personal injury suit; Jackson-Lee (TX) which clarifies language regarding notification; and a Yes vote for final passage.

Due to the very technical nature of this legislation, we feel that it would be most appropriate for league staff and only selected credit union leaders to lobby their legislators for passage of this bill. Any calls that can be placed to House members' offices tomorrow morning would be very helpful.

GAPS CALL ON SENATE BANKRUPTCY VOTE

As you saw in this afternoon's Call to Action, bankruptcy reform is headed for a floor vote in the Senate possibly, as soon as next Monday. We will be holding a GAPS call tomorrow, May 12th at 1:30 pm Eastern Time to discuss our lobbying and grassroots strategy for this bill. We hope that you will be able to join us for this call which we expect to be relatively brief, with the first half used for an update from our lobbying team and the second half reserved for questions and discussion.

The call-in number for the call is: 1–888–243–0810.

The confirmation number is: 1551181.

MAY 11, 1999.

Hon. _____ _____
House of Representatives
Washington, DC.

DEAR REPRESENTATIVE: As leaders of America's information and high technology industry associations—representing a broad cross-section of companies, ranging from the smallest start-ups to the industry leaders—we are writing to express our strong support for HR 775, bipartisan legislation, to provide a framework under which year 2000 (Y2K)-related disputes can be resolved without costly lawsuits.

Our industry wants Congress to pass and the President to sign legislation that will encourage all businesses to continue efforts to fix, rather than litigate, Y2K-related problems. H.R. 775 creates powerful incentives for companies to remediate Y2K problems, while preserving the rights of those who suffer real injuries to pursue legal recourse. It is essential that everyone in the supply chain of the American economy work together to prevent the unique situation of the century date change from triggering chaos in our legal system and the entire economy.

Congress, the White House and the business community worked together last year to unanimously enact the Year 2000 Information and Readiness Disclosure Act. That important legislation has helped encourage information-sharing to enhance Y2K readiness throughout all sectors of the American economy. H.R. 775 will provide additional tools

and incentives to enable businesses and their customers to concentrate their efforts, attention and resources on preventing year 2000-related problems.

The companies we represent, together with their customers and suppliers, support HR 775 legislation to ensure the continued robust growth of the American economy, through an investment in remediation not litigation efforts.

Sincerely,

Rhett B. Dawson, President, Information Technology Industry Council (ITI).

Harris N. Miller, President, Information Technology Association of America (ITAA).

George Scalise, President, Semiconductor Industry Association (SIA).

Ken Wasch, President, Software Information Industry Association (SIIA).

Robert Holleyman, President, Business Software Alliance (BSA).

Matthew Flanigan, President, Telecommunications Industry Association (TIA).

William Archey, President, American Electronics Association (AEA).

John Venator, President, Computing Technology Industry Association (CompTIA).

Reed Hastings, President, Technology Network (TechNet).

Don McLaurin, President, National Association Computer Consultant Business (NACCB).

Stanley Myers, President, Semiconductor Equipment and Materials International (SEMI).

Mr. BOUCHER. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I think it is important to state for the RECORD when the gentleman speaks that a litigant in a suit when punitive damages are awarded under the provisions of this bill does not receive those punitive damages, that it goes to a special fund.

Now, if I am misstating the language of the bill, maybe the gentleman can educate me.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. DELAHUNT. I yield to the gentleman from Virginia.

Mr. GOODLATTE. As a part of the self-executing rule that was just passed by this House those provisions were taken out.

Mr. DELAHUNT. Mr. Chairman, I am very pleased to hear that.

Mr. GOODLATTE. Maybe that would have changed the gentleman from Massachusetts' vote on the rule, had he known that.

Mr. DELAHUNT. Mr. Chairman, it would not have changed my vote on the rule, but it certainly takes a bill from being very bad to simply bad.

Mr. GOODLATTE. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee (Mr. BRYANT), a member of the Committee on the Judiciary.

(Mr. BRYANT asked and was given permission to revise and extend his remarks.)

Mr. BRYANT. Mr. Chairman, I rise in support of H.R. 775 and certainly want to commend both sides of this debate and certainly the level of the debate. I think it simply shows that, in both cases, reasonable minds can disagree.

I think we all recognize the potential problem out there with Y2K litigation, the uniqueness that it would provide to us all, the challenge here, and I think that is why many of us want to look to a special bill here that would give incentives to people rather than go the traditional adversarial route in the courts and bog down in litigation and get into that adversarial situation where neither side does anything for awhile until the court system operates.

We, many of us, feel the need to have this procedure that would encourage people to settle, to work quickly to get the computer systems and networks back up, to get our commerce system to the extent that it has been slowed down back up to full speed.

As my colleagues know, it has been mentioned that 98 percent of the businesses in this country are small businesses. What we are also failing to mention here, though, is that these small businesses employ 60 percent of the work force. We are talking about a lot of people here and an awful lot of jobs at stake, and that is why these issues of alternative dispute resolution, of new forms of offers of judgment where people, if they do not better their offer of judgment, then they have to pay the other side's attorneys' fees. Whether the cooling off period that we provide here, these are all very solid legal procedures that would encourage people to sit down and work it out in a businesslike manner.

There is provision in this bill for fair compensation, but, on the other hand, there is provision in this bill for remedial action, which is what we have talked about all along and, again, due to just the special circumstances that we could be facing on January 1, Year 2000, because of the uniqueness of this potential legal matter and because of the possible ramifications across our society and, again, 98 percent of the small businesses and 60 percent of the work force.

I would ask that this not be a business-as-usual situation.

Mr. BOUCHER. Mr. Chairman, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I urge my colleagues to support this important legislation. We have the reforms in it that were contained in the Contract with America 4 years ago, including caps on punitive damages so that no one unelected jury in some part of the country can give a multi-million-dollar award that can wipe out a business, change national public policy without the Congress or other State legislative bodies having the ability to do that. We limit the effect of joint and several liability by making it proportionate liability so that if one is 1 percent at fault they are not held responsible for a hundred percent of the damages in a case which is under current law. We change that so that if one is 1 percent at fault they only pay 1 percent of the liability.

In addition, we have reforms here of class action lawsuits so that one cannot go forum shopping in a particular State, to a particular county, to a particular court, to a particular judge that may be favorable to bringing what is otherwise a frivolous class action lawsuit. There are States in this country that have certified a great many nationwide class action lawsuits; in fact, more than the entire Federal judiciary has certified in some years, and that reform is badly needed.

This legislation encourages parties to get together, work out their problems, solve the Y2K problem without first filing a lawsuit; and they do that by encouraging alternative dispute resolution. We do that by discouraging the filing of frivolous lawsuits because, if we do that, they may wind up paying some of their opposing side's attorney fees if their suit is deemed nonmeritorious. And I encourage my colleagues to support this legislation and to oppose the amendments that are going to be offered by the gentleman from New York (Mr. NADLER) and the gentleman from Virginia (Mr. SCOTT) which we will address shortly.

Mr. BLILEY. Mr. Chairman, I rise in support of H.R. 775, the Year 2000 Readiness and Responsibility Act. With just over seven months to go until the new millennium, it is important for the Congress to move forward with this legislation. This year, the Commonwealth of Virginia enacted its own legislation on Year 2000 problems. As the bill we have on the floor today goes to conference, I will be watching to see whether the provisions of Virginia's Year 2000 law will remain operative.

I thank the sponsors of the bill for their hard work.

Mr. COX. Mr. Chairman, whatever its other consequences, the Y2K bug may crash the nation's justice system—not for days or weeks but for years. Our justice system, already plagued by intolerable delays and expense, could be submerged under a deluge of cases—both meritorious and frivolous—sparked by Y2K. Though estimates of legal liability have ranged as high as a trillion dollars (Lloyd's of London), no one can confidently predict the scale of the liability crisis because no consensus has developed—even among the best informed experts on the subject—about how serious and widespread the underlying Y2K problems will be.

The scale of the legal problem can be guessed at by the scope of remediation efforts: The Gartner Group, a consulting firm, has estimated costs of $400–600 billion worldwide to fix the problem. Federal Express will spend $500 million; Citibank will spend $600 million; Merrill Lynch has 80 people working in shifts, 24 hours a day, seven days a week.

These efforts are focused on two main problems: first, the potential inability of programming in both software and hardware to accurately process date-related codes after 2000 because, to conserve memory, programmers in the past used a two-digit rather than four-digit date field; and second, the potential inability of embedded chips in every sort of mechanical device imaginable to function accurately because they, too, use two-digit date fields.

Even the best-informed Y2K experts differ as to the scope of the problem and the success of the massive public and private remediation efforts now going on around the world.

We can be sure, however, that our Dickensian legal system, which cannot address even 20th-century legal problems, will be wholly unequal to dealing with the millennium bug.

Fear of the impending litigation is already seriously impeding remediation of Y2K problems, causing businesses to limit their own internal reviews and external disclosure and cooperation so that they can avoid being accused of making inaccurate statements or engaging in ''knowing'' misconduct.

Even President Clinton, who has steadfastly opposed civil justice reform and even vetoed the bipartisan 1995 law suit reform bill—it was evaded anyway, over his veto—has accepted the need for a specific Y2K reform when he signed Mr. DREIER's ''Y2K Information and Readiness Disclosure Act'' in October 1998. This bill, which I cosponsored, is designed to encourage businesses to disclose the status of their Y2K readiness (and thereby encourage cooperation on remediation) without fear that their disclosures will lead to a securities suit.

But much more remains to be done: Fear of unfair liability is continuing to chill proactive remediation efforts, and in any case Congress must put in place a framework now to control the avalanche of litigation that we can see coming.

Y2K will exacerbate all the existing flaws in our legal system. Y2K lawsuits began to be filed in mid-1997, two and a half years before the millennium, and trial lawyers are now holding workshops and symposia on how to run Y2K class actions. Unless Congress acts quickly, we will soon see the same kind of abusive class actions that led Congress to act in 1995 and again in 1998 to curb securities strike suits—but this time, on a vastly larger scale, affecting virtually every sector of the economy. Enterprising lawyers will bring meritless suits to shake down deep-pockets defendants, or will run meritorious claims for their own benefit rather than their clients'—raking off hundreds of millions and even billions of dollars in fees that should have gone to redress their clients' injuries.

In the tobacco cases, for example, billions of dollars in fees have already been diverted from tobacco victims to their counsel: in Texas, they will receive some $92,000 an hour.

Tobacco lawyers fees in just two settled cases, Texas and Minnesota, amount to $2.8 billion; attorney's fees under all existing state contingent-fee contracts have been estimated to run to $14–19 billion; private tobacco suits have been estimated to generate more than $30 billion in lawyers' fees, and could soon average $3–8 billion a year.

Our legal system does no better at handling non-class action, business-to-business litigation, which the millennium bug will also generate in vast quantities. Lawsuits between software and hardware vendors and their customers will be only the top level of Y2K litigation that could cascade through every economic relationship in the economy.

It's vital that Congress act now to set sensible limits on this potential avalanche of litigation.

H.R. 775, the Year 2000 Readiness and Responsibility Act, was introduced in late February 1999 by Republican Representatives DAVIS, DREIER, and COX and by Democratic Representatives MORAN, CRAMER, and DOOLEY. This balanced, pro-consumer legislation will help remove the current disincentives to proactive remediation of Y2K problems. It will help people by focusing on fixing the Y2K problems in advance—not affixing blame for them afterwards.

If failures occur, its innovative procedural reforms will encourage constructive alternatives to long, drawn-out lawsuits. It strengthens pleading standards to help winnow out meritless cases. It adopts the Fair Share Rule of proportionate liability for year 2000 claims. It sets reasonable parameters for punitive damages. And it adopts important pro-consumer class-action reforms in Y2K cases. I'm delighted to have cosponsored this important, common-sense reform, which will help consumers and preserve our country's high-tech edge in the global economy.

Mr. CRAMER. Mr. Chairman, the year 2000 is only a little over 7 months away.

We've all heard the dire predictions—airplanes will fall out of the sky, or the nation's power grid will go down, or the world's financial markets will crash. Our nation's business community has heard these predictions as well. That's why as we get closer and closer to the year 2000, the business community is accelerating its already massive effort to bring their computer systems into Y2K compliance. And Mr. Chairman, it is a massive effort. It has been estimated that by the time all is said and done, American businesses will have spent $50 billion on addressing Y2K problems.

However, Mr. Chairman, we must all admit that despite their best efforts, and despite the extraordinary amount of money invested in bringing their computer systems up to speed, something, somewhere will go wrong. It's inevitable. Today our world economy is so interdependent and tied to computers that a major Y2K failure almost anywhere in the world has the potential to result in minor or major disruptions everywhere.

Mr. Chairman, when this day comes we must have in place an effective legal framework for dealing with all the litigation that will surely result from these expectant Y2K failures or disruptions. The Y2K special committee in the Senate has stated that litigation could cost as much as one trillion dollars. I don't know about my colleagues, but I would like to see our nation's business community spend their resources on fixing the problem rather than litigating it. Indeed, despite the fact that we are 7 months away from the year 2000, more than 80 Y2K lawsuits have already been filed. Can you imagine how many frivolous lawsuits will be filed once we've had the first failure or disruption?

That is why I am supporting H.R. 775. This bill sets in place an effective legal framework that will sift through the frivolous lawsuits while allowing the meritorious lawsuits to precede. H.R. 775 encourages a fast, fair and predictable mechanism for resolving Y2K related disputes. It encourages resolutions outside of the courtroom so that problems can be fixed quickly.

What this bill will not do, as some of my colleagues will argue it does, is encourage people not to fix the problem. In fact, there are no protections for people or businesses that act irresponsibly or negligently in preparing for the Y2K problem.

This bill makes sure that businesses that attempt to fix their Y2K problems are not unfairly punished by being exposed to frivolous lawsuits. But, it still holds people accountable if they are negligent or irresponsible. If someone intends to sue a company for damages related to Y2K, the bill would give the company 90 days to fix the problem before a lawsuit could be filed. In addition, defendants would only be liable for their portion of the damages—if the court says a company is responsible for 10 percent of the problem, then the company pays 10 percent of the damages.

I represent a high-tech district in the state of Alabama where the Y2K issue is at the forefront of a lot of people's minds. State officials in Alabama have recently announced that our state is behind schedule on the Y2K problem. Businesses in my District are concerned, not with the possibility of experiencing Y2K failures—because the large majority of these businesses have made the good-faith effort to commit the resources necessary to reach compliance—but rather these companies are concerned with the threat of frivolous lawsuits. In a recent letter to me, one company wrote, ''At very considerable expense to us, our company has gone to great lengths to make sure that we are Y2K compliant, but we do expect problems will be passed on to us. A mountain of litigation could create untold amounts of time and expense which could be the hole that 'sinks the ship' ''.

Mr. Chairman, the American people are looking for leadership on this issue—not just empty rhetoric. H.R. 775, is a responsible step in the right direction. It allows our legal system to work as it should—meritorious lawsuits will precede and frivolous lawsuits will be stopped.

Mr. Chairman, as I said earlier, the year 2000 is only a little over 7 months away. The clock is ticking and time is running out. It's time for this Congress to act and provide the protection that our business community needs. We need to create an environment where responsible firms can concentrate on solving their Y2K problems, rather than spending their time working on legal defense strategies. H.R. 775 does this.

Therefore, I urge my colleagues to support passage of H.R. 775.

Mrs. MINK of Hawaii. Mr. Chairman, I rise to express my opposition to the passage of H.R. 775, the Year 2000 Readiness and Responsibility Act. I will vote ''no'' on final passage because H.R. 775 rewards companies' inadequate response and irresponsible behavior in light of the Year 2000 computer problem. This bill is more appropriately characterized as tort restructuring legislation, limiting the basic right of wronged parties to find redress through the legal system.

Computer technology facilitates virtually all the activities that pervade our daily lives. The threat of computer failure in relation to the Year 2000 problem has been looming over our heads for many years. In previous sessions, Congress focused on means to overcome this defect and provided funding for emergency situations that may arise. These are positive, constructive ways of handling this critically important issue. On the contrary, the legislation before us merely places the burden of counteracting difficulty caused by computer technology malfunctions on the consumer, rather than the manufacturer. This is a patently unfair proposition.

H.R. 775 strikes at the heart of tort law, removing basic rights which secure redress for wronged individuals. The most untenable portion of H.R. 775 is the establishment of the ''reasonable efforts'' defense. According to the

bill's provisions, even if a defendant company was grossly negligent or intentionally at fault, as long as they make ''reasonable efforts'' to solve the problem the defendant bears no liability for the defect.

Instead, the consumer bears the burden for the defective product. This holds true despite the extent of the plaintiff's resultant damage. Small business owners, Mom and Pop stores, struggling entrepreneurs, these are the individuals who will lose if H.R. 775 becomes law.

Although technology producers have known about the Y2K computer glitch for many years, H.R. 775 severely limits punitive damages for Y2K defects. Why do technology producers merit this special benefit when they are presently on notice that their products could contain flaws and have the opportunity to rectify them now? Situations may exist where it is financially prudent for companies to ignore their products' Y2K defects. Why, then, should we release these companies from punitive liability for their intentional omissions?

In addition, H.R. 775 removes the right to claim joint and several liability. If a plaintiff maintains that a product created by several defendants is faulty, the plaintiff must pursue each defendant individually to prove their percentage of responsibility instead of shifting this burden to the defendant. This section of the bill makes people harmed by Y2K glitches less likely to recoup their losses and deprives them of a fundamental, legal benefit.

Representatives CONYERS, LOFGREN, and BOUCHER offered a substitute bill which balances the interests of economic stability and a consumer's right to redress. The Conyers amendment sought to curb frivolous, damaging lawsuits, but did not do so at the expense of a plaintiff's essential rights. It established a ''cooling off'' period to allow parties to settle their differences outside of court, relieved defendants of joint and several liability if they were responsible for only a small portion of the defect, and encouraged alternative dispute resolution. It left the basic tenets of tort law unchanged while providing special rules for this unique, critical situation. I supported the Conyers, Lofgren, Boucher substitute. I cannot support the extant H.R. 775.

Mr. POMEROY. Mr. Chairman, I am voting today against H.R. 775, the Year 2000 Readiness and Responsibility Act, and am voting in favor of the Conyers substitute.

Both alternatives fall short of providing the proactive measured relief warranted on this unique issue, but the flaw in H.R. 775 is fatal in its character, while the Conyers substitute offers a platform for further refinement in conference committee.

The fatal flaw in H.R. 775 is the ''loser pays'' provision which holds a litigant liable to pay the other side's attorneys' fees if the plaintiff rejects a pre-trial settlement offer, and then ultimately secures a less favorable verdict from the court.

The ''loser pays'' provision (Section 507) is drastic overkill which could actually discourage companies from fixing their computer systems in advance of the problem. The ''loser pays'' provision will create a particular problem for small businesses and middle income victims of Y2K failures because these groups have far less financial resources than large defendant corporations and cannot afford the risk of paying a large corporation's legal fees based on the outcome of a trial.

In effect, the possibility of an adverse verdict will deter small businesses from pursuing even the most egregious claims to court. The provision is so onerous that it would even apply to a harmed party that prevails in a Y2K action so long as they obtain less than a pretrial settlement. This would have the perverse effect of rewarding a negligent or reckless defendant and punishing an innocent victim.

I do not believe, however, the Conyers substitute does enough to address joint and several liability exposure. I am concerned that many high technology firms will be held accountable for an entire damage award simply because they played some small role in designing a system several years ago, even when the principal party responsible makes little or no effort to update their systems into Y2K compliance. H.R. 777's proportionate liability provision makes a defendant liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that company, and if amended to address responsibility for orphan shares, represents reform I could support.

Mr. Chairman, I truly hope that we can address these outstanding issues and work together to strike the proper legal balance that addresses the Y2K liability question. Unfortunately the vote today does not represent an acceptable package. I vote ''no'' and hope further legislative activity on this issue will create an appropriate response that I will be able to support.

Mr. PACKARD. Mr. Chairman, as we prepare to enter the new millennium, this is a time of anxious anticipation for what the next century will bring. However, as eager as we may be for the new millennium, we are also apprehensive over problems that may be looming around the corner with the Year 2000.

We only have 233 days left until the computer-related doomsday commonly known as the Y2K problem strikes. The Y2K Computer problem derived from the time when the first computers were developed, and programmers decided to denote a year using two digits instead of four. In other words, without a solution to this problem, computers may read all dates as ''1900'' instead of ''2000'' which could cause mayhem around the world. Just think about all the normal daily activities that will be affected, airlines reservations, ATM accounts, e-mail, even your VCR.

Not surprisingly, the Y2K computer problem has spurred several lawsuits. It has been reported that for every $1 spent trying to fix this glitch, $2–$3 are spent on litigation. This sends a clear message that this system is in desperate need of repair. It is absurd that we spend more money battling lawsuits rather than fixing the problem.

The Year 2000 Readiness and Responsibility Act will curb the costs of litigation associated with the Y2K computer problem. H.R. 775 will establish a $250,000 limit on punitive damages awarded in Y2K lawsuits, and mandate a 90-day waiting period before potential plaintiffs may file a Y2K claim to allow businesses to correct the problem. This is important legislation, which will allow experts who can fix the Y2K computer problem to actually do so without fear of liability for other problems they did not create.

Mr. Chairman, I think it is clear the time has come to focus our efforts on solving this obstacle, not creating additional costly hurdles. We need to fix Y2K related problems, rather than litigate them. I urge my colleagues to support H.R. 775 and fix this broken system.

Mr. SHAYS. Mr. Chairman, I strongly support H.R. 775, the Year 2000 Readiness and Responsibility Act. This bill is a balanced approach to prevent a slew of frivolous lawsuits from being visited upon businesses who made a good faith effort to fix their Y2K problems, while at the same time holding truly negligent businesses responsible for not correcting theirs.

The extent of the Y2K problem won't be known until January 1, 2000. But there's one thing we can already be certain of: lawyers are lining up to sue everyone whose operations are even slightly hampered by the computer bug.

Today, companies in my district, and all over this country, are working overtime to fix their Y2K problems. Let's face it: they're doing so because it is in their economic self-interest. No company wants to lose business because of an inability to fix a computer bug. And no company wants computer systems that cannot operate in the next millennium.

But even while companies take proper steps to fix their computer glitches, problems may still arise, and that is why this legislation is necessary.

H.R. 775 takes a number of common sense steps to reduce the number of law suits that stem from computer problems. The bill limits punitive damages to the higher of $250,000 or three times the amount awarded for compensatory damages, in addition to allowing for the recovery of 100 percent of economic damages.

The bill also mandates a 90-day waiting period before potential plaintiffs may file a Y2K claim to allow businesses time to correct the problem, makes defendants liable only for the proportion of the judgment for which they are at fault, and creates a ''loser-pays'' mechanism when a plaintiff rejects a settlement offer higher than the amount eventually awarded by the court.

Today's economy is growing rapidly. But we mustn't lose sight that the quality of life of all Americans would be negatively affected if we allow the Year 2000 bug to impose excessive financial costs on American businesses.

On May 6, Federal Reserve Chairman Alan Greenspan stated that our nation's ''phenomenal'' economic performance can be credited in large part to leaps in technology, which have made our economy more efficient. The lawsuits that would result if we don't pass this bill will substantially hamper our nation's economic progress. Fear of litigation and its excessive costs will prevent U.S. companies from realizing their economic potential, and that means less jobs for all Americans.

H.R. 775 is vital to American businesses, which pay taxes and create jobs. It will allow them to use their resources to fix their Y2K problems—not fend off frivolous law suits.

We need solutions—not lawsuits. We need to pass this bill.

Mr. CONYERS. Mr. Chairman, I insert the following correspondence for printing in the RECORD:

APRIL 19, 1999.

DEAR REPRESENTATIVE: The undersigned organizations are writing to alert you to serious problems in proposed Year 2000 (Y2K) legislation that could result in far-reaching environmental consequences. the Y2K liability bill sponsored by Representative Tom Davis (H.R. 775) threatens to remove important incentives for companies to fix potentially devastating Y2K computer processing

problems before they occur. The bill also would undermine the ability to individuals and communities injured by Y2K environmental accidents to seek full redress in the courts. We ask you to vote against this bill and any similar legislation which would remove incentives and shield companies that have failed to fix their Y2K problems from legal accountability for any environmental damage.

Y2K processing problems in mainframe computers and embedded chip systems have the potential to harm the environment and affect public health. Although the full extent of environmental problems that may result from Y2K failures is not known, the Environmental Protection Agency has said that ''[d]evastating effects could occur through such problems as accidental contamination of drinking water, the release of harmful pollutants into the air, and the inappropriate distribution of chemicals and toxins into the community.'' A recent report from the U.S. Chemical Safety and Hazard Investigation Board stressed special concern that the Y2K readiness efforts of small to medium-sized chemical facilities are ''less than appropriate.''

We join the House of Representatives in encouraging companies whose computer failures could harm the environment to act now to make their systems Y2K compliant, but we believe the proposed bill would have the opposite effect. Rational businesses facing potential liability for environmental harm will attempt to limit their liability by implementing measures to avoid causing such harm. We believe the threat of extensive liability has already done much to induce companies to become Y2K compliant. By passing bills like H.R. 775, Congress would send the opposite message. The proposed legislation would provide the greatest rewards for inaction to those companies that have done the least to resolve Y2K issues. Passage of this bill may make environmental accidents from Y2K failures more likely, not less.

The bill defines a ''Y2K claim'' as *any* case in which a plaintiff asserts a claim for damages directly or indirectly caused by an actual or potential Y2K failure, or a defendant asserts an actual or potential Y2K failure as a defense in a civil suit. Although the bill exempts claims for physical injury to individuals, this sweeping definition would impede civil actions to recover compensation for damage to personal property and to bring citizens enforcement actions against companies that violate federal or state environmental laws by releasing pollutants into the air or water. The definition of Y2K action in the bill is so sweeping it appears that any time defendants in a civil action wish to avail themselves of the liability limitations in the bills (for example, for environmental violations or community contamination), the defendants need only assert that a computer date processing error was the cause, and procedural hurdles for plaintiffs, new legal excuses for defendants and liability limitations could automatically apply.

We urge you to oppose this bill and any others that would shield defendants from full accountability for environmental harm caused by their Y2K failures, interfere with enforcement of state and federal environmental laws and make it more difficult for individuals and communities to seek full and fair redress from Y2K-related environmental releases.

Sincerely,

STEPHAN KLINE,
Alliance for Justice.
DANIEL J. BARRY,
Americans for the Environment.
MARK SHAFFER,
Defenders of Wildlife.
COURTNEY CUFF,
Friends of the Earth.
JEFF WISE,
National Environmental Trust.
GREG WETSTONE,
Natural Resources Defense Council.
DAVID LOCHBAUM,
Union of Concerned Scientists.
ALLISON LAPLANTE,
U.S. PIRG.

CHEMICAL SAFETY BOARD PRESENTS Y2K REPORT TO SENATE SPECIAL COMMITTEE

(Washington, D.C.—March 15, 1999) Citing 'significant gaps' in awareness, surveillance and communications, members of the U.S. Chemical Safety and Hazard Investigation Board (CSB) today presented their report on potential Y2K problems among chemical manufacturers, handlers and users to the Senate Special Committee on the Year 2000 Technology Problem.

CSB Chairman and Chief Executive Officer Dr. Paul L. Hill, Jr. accompanied by Board Members and Y2K project coordinator Dr. Gerald V. Poje, presented the report to Senate Committee Chairman Robert Bennett (R–Utah). The report indicated intense efforts among the nation's large chemical producers and handlers, but warned of a lack of information on the readiness of small and medium-sized companies in the chemical industry.

''We're pleased that with encouragement from the Senate Special committee we were able to assemble a diverse group of experts from labor, industry, government and environmental groups to discuss the challenges to chemical safety presented by the Y2K technology problem,'' Hill said. ''Now it is up to those same groups to ensure that chemical safety systems work into and beyond the Year 2000.''

The report, prepared at the request of the Senate Special Committee, was the result of a collaborative effort between the CSB and industry, labor, government and environmental group representatives who met in a CSB-organized round table discussion of the problem last December.

''We want to be sure that Y2K doesn't become an explosive catalyst for system failures in the chemical industry.'' Bennett said. ''This industry is already accustomed to dealing with dangerous chemicals, and although I am hopeful there won't be Y2K-related accidents in the chemical industry, the risks are too great to chance the possibility of failures that threaten human lives.''

The following findings were presented in the CSB report:

Large chemical companies with sufficient awareness, leadership, planning and resources to address the Y2K problem are unlikely to experience catastrophic failures—unless there are widespread power failures.

There is a lack of information about small- and medium-sized chemical businesses, but readiness efforts appear to be ''less than appropriate.''

Current federal safety rules provide valuable guidance for risk management, but no specific Y2K guidelines for the chemical industry have been provided by the federal agencies, and there are no plans to do so.

The CSB recommended that the administration convene an urgent meeting of federal agencies to plan public awareness campaigns, develop local and state emergency response and preparedness plans, and contingencies for emergency shutdowns and manual operation of chemical facilities. The report also stresses the importance of preserving the national power grid and local utility continuity.

The Chemical Safety Board is an independent federal agency with the mission of ensuring the safety of workers and the public by preventing or minimizing the effects of industrial and commercial chemical incidents. Congress modeled it after the National Transportation Safety Board (NTSB), which investigates aircraft and other transportation accidents for the purpose of improving safety.

Like the NTSB, the CSB is a scientific investigatory organization. CSB is responsible for finding ways to prevent or minimize the effects of chemical accidents at industrial facilities and in transport; the Board is not an enforcement or regulatory body, but can make recommendations to the Congress and other federal agencies.

[From the Public Citizen, May 10, 1999]

SUMMARY OF H.R. 775, THE ANTI-CONSUMER, ANTI-REMEDIATION Y2K BILL

H.R. 775 unfairly limits defendants' liability for injuries to consumers and small businesses that result from computer failures due to the Year 2000 date processing problem. Rather than promoting ''readiness and responsibility,'' H.R. 775 gives special protections to corporations whose actions result in serious harm to consumers and small companies. This removes one of the primary motivating factors for the Y2K remediation efforts—the threat of legal accountability offered by a strong civil justice system.

Every section of the bill benefits corporate wrongdoers at the expense of injured consumers and small businesses. These one-sided, unfair provisions would:

Cap punitive damages at $250,000 or three times compensatory damages, whichever is greater. For individuals with a net worth of $500,000 or less or businesses or units of local government with fewer than 25 employees, the cap would be whichever amount is smaller. This provision gives the most protection to the most irresponsible companies and is a strong disincentive to quick remediation before failures occur.

Create a new and unprecedented federal standard for punitive damages in Y2K cases. The bill dictates to the States unprecedented new requirements for imposing punitive damages, mandating that punitive damages may only be assessed in Y2K cases if the plaintiff shows by clear and convincing evidence that the defendant's conduct showed a conscious, flagrant indifference to the rights or safety of others and was the proximate cause of the harm or loss at issue in the case. These requirements are in addition to any others imposed by state law for awards of punitive damages—State standards that are already very difficult for plaintiffs to meet. Taken together, these requirements could virtually wipe out punitive damages in Y2K cases. The proximate cause requirement itself is unprecedented in punitive damages law and is tantamount to a bar on these damages in cases where it is not possible to prove a direct causal link between the defendant's egregious acts and the plaintiff's injury.

Require that plaintiffs wait up to 90 days before they can file suit. Plaintiffs must give defendants notice of their intent to sue, and all defendants must do is respond to the notice in 30 days to say what measures they will take—if any—during the next 60 days to fix the problem. But there is no requirement that defects be corrected even though a plaintiff company could suffer substantial losses or go out of business during the waiting period.

Limit Recovery for Economic Losses. H.R. 775 prevents recovery for economic losses unless such losses are provided for by contract

or incidental to personal injury or property damages, in addition to other requirements already in State law. Under this provision, a small business forced to close because of Y2K failures could be left without compensation for economic losses such as lost profits or sales.

Eliminate Joint and Several Liability. The bill makes it federal policy to leave innocent consumers and small businesses injured by Y2K failures uncompensated rather than to make wrongdoers jointly pay for the full amount of the injuries they caused. This means that injured plaintiffs run the risk of remaining partially uncompensated for their Y2K economic and non-economic damages if one or more defendants is judgment-proof. The elimination of joint liability applies even to defendants that were reckless or deliberately injured consumers and small businesses.

Cap the liability of corporate officers and executives. Total liability for corporate officers and executives would be limited to the greater of $100,000 or the person's annual compensation—no matter how knowing or delinquent the corporate officers' or executives' acts were, or how many people were harmed.

Add onerous requirements for more specific information in the pleading document that initiates a case. Normally plaintiffs are required to just give notice of what product or action injured them, not provide evidentiary details backing up their allegations at the outset. Then the discovery process allows the plaintiffs' attorneys to uncover facts and evidence about the defendant's actions and state of mind. This bill requires plaintiffs to provide facts about elements such as the defendant's state of mind before the discovery process ever begins.

Allow most class actions to be removed to federal court, allowing the defendants to choose the most favorable forum. Any claim with aggregated damages of $1 million could be removed from State to federal court even if the suit is based on State law. Plaintiffs must also show that the defect was material for the majority of the class (necessitating individual contact with and assessment of each class member before bringing the case, a requirement that doesn't exist under most, if any, current State laws).

Allow defendants to disclaim implied warrants of fitness. In most States, products are warranted to be fit for the purposes for which they are sold. This bill would allow small print disclaimers and consumers probably never read to keep consumers from recovering for defective products and the losses they cause unless the enforcement of the disclaimer would ''mainifestly and directly'' contravene State law.

The unfairness of H.R. 775 is revealed not only by its one-sided, anti-consumer provisions but also by its one-way preemption of State law. Proponents of this bill say that it would standardize laws across 50 States. However, in several key areas, the bill would not standardize the law but would only preempt state laws that are more pro-consumer than the federal bill. For example, the limits of corporate officer and executive liability only overrides State laws where officers and executives are potentially liable for greater amounts; it leaves in place State laws that cap officer liability at an amount lower than in this federal legislation. The proposal is carefully crafted to provide the most protection for the industries lobbying for it, and the least for those who are injured.

MEDIA ALERT

Who: U.S. Senator Robert F. Bennett (R-Utah), Chairman, Senate Special Committee on the Year 2000 Technology Problem.

What: Tour of Sybron Chemicals Inc., Birmingham, NJ.

Field Hearing on Chemical Industry Y2K Preparedness, Trenton, NJ.

When: Monday, May 10, 1999.

Where: Birmingham, NJ—Trenton, NJ.

Plant Tour and Press Availability, 10 am., Sybron Chemicals, Inc., Birmingham Road, Birmingham, NJ.

Field Hearing, 12 noon, New Jersey Statehouse Annex, 125 West State Street, 4th Floor—Room 11, Trenton, NJ.

SCHEDULED WITNESSES

Charles Jeffress, Assistant Secretary of Labor, U.S. Occupational Safety and Health Agency (OSHA).

Dr. Gerald Poje, Board Member, U.S. Chemical Safety and Hazard Investigation Board.

Paul Couvillion, Global Y2K Director, DuPont.

Jamie Schleck, Executive Vice President, Jame Fine Chemicals, Inc., Bound Brook, NJ.

James Makris, Director, Office of Chemical Emergency Preparedness and Prevention, U.S. Environmental Protection Agency (EPA).

Charlie Martin, Jr., Site Safety Director, Hickson DanChem Corporation, Danville, VA.

Robert Wages, Executive Vice President, Paper, Allied-Industrial, Chemical and Energy Workers (PACE) International Union.

Captain Kevin Hayden, Assistant State Director of Emergency Management, State of New Jersey.

Jane Nagoki, Board Member, Work Environment Council of New Jersey.

BACKGROUND

A report release in March by the U.S. Chemical Safety Board found the chemical production industry among those vulnerable to Y2K-related problems. the report divided the potential for ''catastrophic'' events at U.S. Chemical process plants into three parts:

Failures from software or embedded chips.

External Y2K failures such as power loss.

Multiple accidents that may strain emergency response organizations.

The report found that Y2K assessments on small and medium-sized chemical facilities are ''indeterminate.''

There are approximately 278,000 facilities in the U.S. that generate, transport, treat, store or dispose of hazardous chemicals such as chlorine, propane, and ammonia.

According to the EPA, 85 million Americans live and work within a 5-mile radius of 66,000 facilities handling regulated amounts of high hazard chemicals.

Mr. BOYD. Mr. Chairman, it is estimated that the Year 2000 computer problem could generate up to $1 trillion in litigation costs. This figure is staggering, particularly when we consider the billions of dollars that companies have already invested in trying to correct the crisis before it strikes. While we certainly want to guarantee the court system is open to small businesses who have genuine claims as a result of Y2K failures, we must ensure the Y2K crisis does not lead to a flood of frivolous lawsuits which will only tie up our courts, hampering the timely consideration of legitimate cases, and inhibit our Nation's economic prosperity.

For these reasons, I support Congress' consideration of legislation to lessen the economic impact of the Y2K problem and encourage businesses to correct the problem before January 1 arrives so the court system is not bogged down with unmeritorious claims. I believe H.R. 775, the Year 2000 Fairness and Responsibility Act, addresses many of these problems, and I support this legislation because I believe it is critical for this Congress to pass legislation dealing with Y2K problems before they occur.

However, I do have concerns about certain provisions included in H.R. 775, and I hope these problems with the bill will be addressed during the amendment process in the House and in conference committee negotiations. Most notably, I do not support the Committee passed ''loser pays'' provision which would require a litigant who was offered a settlement before trial to pay the other parties' attorney fees if the trial verdict is less favorable to the litigant than the settlement conditions. In such a case, a small business who actually wins a suit against a large software provider would be forced to pay that provider's attorney fees if the final award is $1 less than the proposed settlement figure.

In addition, I feel the ''reasonable efforts'' defense which the bill establishes for the defendant goes too far in overriding current contract and tort law. It is my hope that as Congress continues to consider this important legislation, we can develop a workable compromise which addresses these legislative problems and ensures both the plaintiffs and defendants in Y2K cases are treated fairly and guaranteed their day in court.

Mr. MOORE. Mr. Chairman, I rise to explain my votes cast today on H.R. 775, the Year 2000 Readiness and Responsibility Act.

I have heard from a number of businesspeople from Kansas' Third Congressional District who are concerned over the potential for liability over Year 2000 computer failures or for the cost of remediation. I agree that we should provide incentives to make Y2K systems compliant before a problem occurs, and that we should encourage resolution of Y2K problems without litigation, wherever possible. Therefore, I support a legislative solution that discourages frivolous litigation, while ensuring that the courts remain available for legitimate claims.

I am very concerned, however, that the bill before us today goes too far. Enactment in its current form will lessen the incentive for corrective action by businesses.

I have several specific problems with the language in H.R. 775 that is before us today:

The legislation includes ''loser pays'' language providing that, if a plaintiff damaged by a Y2K defect rejects a plaintiff's offer to settle a case, and wins a verdict for even $1 less than the settlement offer, the plaintiff would be forced to pay the defendant's costs and attorneys' fees from the time of the offer. This proposal would fundamentally alter the American rule that each side should pay its own legal costs, and would impose a tremendous burden on small businesses harmed by Y2K defects.

Small businesses also often must resort to class action suits in order to pool the resources necessary to seek remediation through the judicial system. This legislation would impose federal standards on class action lawsuits excluding potential members of a class action who have been damaged by a Y2K defect from the class if they fail to respond to notices sent through the mail. The bill also adds additional burdens to our overtaxed federal court system by allowing the removal of state class action suits to federal court if the amount the defendant is being sued for is greater than $1 million.

The legislation also would limit punitive damages—assessed for the most outrageous misconduct—to the greater of three times the compensatory damages or $250,000. When the defendant is an individual with a net worth of less than $500,000 or a business with fewer than 25 employees, the arbitrary limit would be the lesser of three times the actual damages or $250,000. I am unconvinced of the need to eliminate the option of assessing a greater level of punitive damages against a defendant capable of paying such damages, if his or her conduct was so flagrantly abusive that our judicial system finds additional penalties are warranted.

Mr. Speaker, the Kansas Legislature considered, but did not enact, legislation to shield our state's businesses from Y2K liability. For this reason, I believe federal action in this area is appropriate. I supported the substitute amendment offered by Representative Lofgren, which addresses the legitimate needs of the high technology community without depriving harmed businesses and consumers of their basic rights. The Lofgren substitute encourages mediation, through a 90 day cooling off period and alternative dispute resolution procedures. It helps eliminate frivolous litigation, through special pleading requirements and mitigation of damages. It increases certainty within the legal process, by preserving the defenses of impossibility and commercial impracticability, and eliminating economic damages not covered by contract. Additionally, it limits joint and several liability.

I know that the legislation before the House today will be substantially revised before being presented to the President for his signature. The companion measure has not yet passed the Senate; both versions would then be considered, and redrafted, by a House-Senate conference committee before being submitted to the House for a final vote. I hope the final version of this measure will include the kind of moderate, common sense reforms that my constituents and I can support. I will continue to work with my House and Senate colleagues toward achievement of this goal.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill, modified by the amendments printed in part 1 of House Report 106–134, is considered as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute, as modified, is as follows:

H.R. 775

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Year 2000 Readiness and Responsibility Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Congress seeks to encourage businesses to concentrate their attention and resources in the short time remaining before January 1, 2000, on addressing, assessing, remediating, and testing their year 2000 problems, and to minimize any possible business disruptions associated with year 2000 issues.

(2) It is appropriate for the Congress to enact legislation to assure that year 2000 problems do not unnecessarily disrupt interstate commerce or create unnecessary case loads in Federal and State courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of the year 2000 problem.

(3) Year 2000 issues will affect practically all business enterprises to some degree, giving rise to a large number of disputes.

(4) Resorting to the legal system for resolution of year 2000 problems is not feasible for many businesses, particularly small businesses, because of its complexity and expense.

(5) The delays, expense, uncertainties, loss of control, adverse publicity and animosities that frequently accompany litigation of business disputes can only exacerbate the difficulties associated with the year 2000 date change, and work against the successful resolution of those difficulties.

(6) The Congress recognizes that every business in the United States should be concerned that widespread and protracted year 2000 litigation may threaten the network of valued and trusted business relationships that are so important to the effective functioning of the world economy, and which may put unbearable strains on an overburdened judicial system.

(7) A proliferation of frivolous year 2000 actions by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(8) The Congress encourages businesses to approach their year 2000 disputes responsibly, and to avoid unnecessary, time-consuming and costly litigation based on year 2000 failures. Congress supports good faith negotiations between parties when there is a dispute over a year 2000 problem, and, if necessary, urges the parties to enter into voluntary, non-binding mediation rather than litigation.

SEC. 3. DEFINITIONS.

In this Act:

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

(2) DEFENDANT.—The term ''defendant'' means any person against whom a year 2000 claim has been asserted.

(3) ECONOMIC LOSS.—The term ''economic loss''—

(A) means any damages other than damages arising out of personal injury or damage to tangible property; and

(B) includes, but is not limited to, damages for lost profits or sales, for business interruption, for losses indirectly suffered as a result of the defendant's wrongful act or omission, for losses that arise because of the claims of third parties, for losses that must be pleaded as special damages, and consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(4) GOVERNMENTAL ENTITY.—The term ''governmental entity'' means an agency, instrumentality, other entity, or official of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(5) MATERIAL DEFECT.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or intended. The term ''material defect'' does not include a defect that has an insignificant or de minimis effect on the operation or functioning of an item, that affects only a component of an item that, as a whole, substantially operates or functions as designed, or that has an insignificant or de minimis effect on the efficacy of the service provided.

(6) PERSON.—The term ''person'' means any natural person and any entity, organization, or enterprise, including but not limited to corporations, companies, joint stock companies, associations, partnerships, trusts, and governmental entities.

(7) PERSONAL INJURY.—The term ''personal injury'' means any physical injury to a natural person, including death of the person, and mental suffering, emotional distress, or like elements of injury suffered by a natural person in connection with a physical injury.

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

(9) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages that are awarded against any person to punish such person or to deter such person, or others, from engaging in similar behavior in the future.

(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 United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(11) YEAR 2000 ACTION.—The term ''year 2000 action'' means any civil action of any kind brought in any court under Federal or State law, or an agency board of contract appeal proceeding, in which a year 2000 claim is asserted.

(12) YEAR 2000 CLAIM.—The term ''year 2000 claim''—

(A) means any claim or cause of action of any kind, other than a claim based on personal injury, whether asserted by way of claim, counterclaim, cross-claim, third-party claim, defense, or otherwise, in which the plaintiff's alleged loss or harm resulted, directly or indirectly, from a year 2000 failure;

(B) includes a claim brought in any Federal or State court by a governmental entity when acting in a commercial or contracting capacity; and

(C) does not include a claim brought by such a governmental entity acting in a regulatory, supervisory, or enforcement capacity.

(13) YEAR 2000 FAILURE.—The term ''year 2000 failure'' means any failure by any device or system (including, without limitation, any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions, however constructed, in processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving year 2000 date-related data.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE.—This Act applies to any year 2000 claim brought after February 22, 1999, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding with respect to such claim.

(b) NO NEW CAUSE OF ACTION CREATED.—Nothing in this Act creates a new cause of action, and, except as otherwise explicitly provided in this Act, nothing in this Act expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) EXCLUSION OF PERSONAL INJURY CLAIMS.—None of the provisions of this Act shall apply to any claim based on personal injury.

(d) PREEMPTION OF STATE LAW.—Except as otherwise provided in this Act, this Act supersedes State law to the extent that it establishes a rule of law applicable to a year 2000 claim that is inconsistent with State law.

TITLE I—UNIFORM PRE-LITIGATION PROCEDURES FOR YEAR 2000 ACTIONS

SEC. 101. NOTICE PROCEDURES TO AVOID UNNECESSARY YEAR 2000 ACTIONS.

(a) NOTIFICATION PERIOD.—Before filing a year 2000 action, except an action that seeks only injunctive relief, a prospective plaintiff shall send by certified mail to each prospective defendant a written notice that identifies, with particularity as to any year 2000 claim—

(1) any symptoms of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) the facts that lead the prospective plaintiff to hold such person responsible for both the defect and the injury;

(4) the relief or action sought by the prospective plaintiff; and

(5) the name, title, address, and telephone numbers of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

Except as provided in subsection (c), the prospective plaintiff shall not commence an action in Federal or State court until the expiration of 90 days after the date on which such notice is received. Such 90-day period shall be excluded in the computation of any applicable statute of limitations.

(b) RESPONSE TO NOTICE.—

(1) IN GENERAL.—Not later than 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice and describing any actions it has taken or will take by not later than 60 days after the end of that 30-day period, to remedy the problem identified by the prospective plaintiff.

(2) INADMISSIBILITY.—A written statement required by this subsection is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(3) PRESUMPTIVE TIME OF RECEIPT.—For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(c) FAILURE TO RESPOND.—If a prospective defendant fails to respond to a notice provided pursuant to subsection (a) within the 30-day period specified in subsection (b) or does not describe the action, if any, that the prospective defendant has taken or will take to remedy the problem identified by the prospective plaintiff within the subsequent 60 days, the 90-day period specified in subsection (a) shall terminate at the end of that 30-day period as to that prospective defendant and the prospective plaintiff may thereafter commence its action against that prospective defendant.

(d) FAILURE TO PROVIDE NOTICE.—If a defendant determines that a plaintiff has filed a year 2000 action without providing the notice specified in subsection (a) and without awaiting the expiration of the 90-day period specified in subsection (a), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff in its initial response to the complaint. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery in the action involving that defendant for the applicable time period provided in subsection (a) or (c), as the case may be, after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during such applicable period.

(e) EFFECT OF CONTRACTUAL WAITING PERIODS.—In cases in which a contract or a statute enacted before January 1, 1999, requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided in the contract or the statute is controlling over the waiting period specified in subsections (a) and (d).

(f) SANCTION FOR FRIVOLOUS INVOCATION OF THE STAY PROVISION.—In any action in which a defendant acts pursuant to subsection (d) to stay the action, and the court subsequently finds that the defendant's assertion that the suit is a year 2000 action was frivolous and made for the purpose of causing unnecessary delay, the court may award sanctions to opposing parties in accordance with the provisions of Rule 11 of the Federal Rules of Civil Procedure or the equivalent applicable State rule.

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

(h) SPECIAL RULE FOR CLASS ACTIONS.—For the purpose of applying this section to a year 2000 action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

SEC. 102. ALTERNATIVE DISPUTE RESOLUTION TO AVOID UNNECESSARY YEAR 2000 ACTIONS.

(a) IN GENERAL.—(1) At any time during the 90-day period specified in section 101(a), either party may request the other to use alternative dispute resolution. If, based upon that request, the parties enter into an agreement to use alternative dispute resolution, they may also agree to an extension of the 90-day period.

(2) At any time after expiration of the 90-day period specified in section 101(a), whether before or after the filing of a complaint, either party may request the other to use alternative dispute resolution.

(b) PAYMENT OF MONEYS DUE.—If the parties resolve their dispute through alternative dispute resolution as provided in subsection (a), the defendant shall pay all moneys due within 30 days, unless another period of time is agreed to by the parties or established by contract between the parties.

(c) FORECLOSURE OF FURTHER PROCEEDINGS ON RESOLVED ISSUES.—Resolution of the issues by the parties prior to litigation through negotiation or alternative dispute resolution shall foreclose any further proceedings with respect to those issues.

SEC. 103. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE.—This section applies exclusively to year 2000 claims and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) NATURE AND AMOUNT OF DAMAGES.—With respect to any year 2000 claim that seeks the award of money damages, the complaint shall state with particularity the nature and amount of each element of damages, and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS.—With respect to any year 2000 claim in which the plaintiff alleges that a product or service was defective, the complaint shall identify with particularity the symptoms of the material defects and shall state with particularity the facts supporting the conclusion that the defects are material.

(d) REQUIRED STATE OF MIND.—With respect to any year 2000 claim as to which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, the complaint shall, with respect to each element of the year 2000 claim, state with particularity the facts giving rise to a strong inference that the defendant acted with the required state of mind.

(e) MOTION TO DISMISS; STAY OF DISCOVERY.—

(1) DISMISSAL FOR FAILURE TO MEET PLEADING REQUIREMENTS.—In any year 2000 action, the court shall, on the motion of any defendant, dismiss the complaint without prejudice if the requirements of subsection (a), (b), or (c) are not met with respect to any year 2000 claim asserted therein.

(2) STAY OF DISCOVERY.—In any year 2000 action, all discovery shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

(3) PRESERVATION OF EVIDENCE.—

(A) IN GENERAL.—During the pendency of any stay of discovery entered pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically stored or recorded data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were a subject of a continuing request for production of documents from an opposing party under applicable Federal or State rules of civil procedure.

(B) SANCTION FOR WILLFUL VIOLATION.—A party aggrieved by the willful failure of an opposing party to comply with subparagraph (A) may apply to the court for an order awarding appropriate sanctions.

SEC. 104. DUTY OF ALL PERSONS TO MITIGATE YEAR 2000 COMPUTER FAILURES AND RESULTING DAMAGES.

Damages awarded for any year 2000 claim shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the year 2000 failure.

TITLE II—YEAR 2000 ACTIONS INVOLVING CONTRACTS

SEC. 201. CERTAINTY OF CONTRACT TERMS FOR PREVENTION OF YEAR 2000 DAMAGES.

(a) IN GENERAL.—Subject to subsection (b), in resolving any year 2000 claim, any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be fully enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(b) INTERPRETATION OF CONTRACT.—In resolving any year 2000 claim as to which a contract to which subsection (a) applies is silent with respect to a particular issue, the interpretation of the contract with respect to that issue shall be determined by applicable law in effect at the time the contract was executed.

SEC. 202. APPLICATION OF EXISTING IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY DOCTRINES.

(a) DOCTRINE OF IMPOSSIBILITY AND COMMERCIAL IMPRACTICABILITY.—With respect to any year 2000 claim for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

(b) REASONABLE EFFORTS.—To the extent that impossibility or commercial impracticability is raised as a defense against a claim for breach or repudiation of contract, the party asserting the defense shall be allowed to offer evidence that its implementation of the contract, or its efforts to implement the contract, were reasonable in light of the circumstances.

SEC. 203. PROTECTION OF PERSONS FROM LIABILITY NOT ANTICIPATED IN YEAR 2000 CONTRACTS.

With respect to any year 2000 claim involving a breach of contract or a claim related to the contract, no party may claim or be awarded any category of damages unless such damages are allowed by the express terms of the contract or, if the contract is silent on such damages, by operation of the applicable Federal or State law that governed interpretation of the contract at the time the contract was entered into.

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

SEC. 301. PROPORTIONATE LIABILITY.

(a) IN GENERAL.—A person against whom a final judgment is entered with respect to a year 2000 claim, other than a claim for breach or repudiation of contract, shall be liable solely for the portion of the judgment that corresponds to the percentage of responsibility of that person, as determined under subsection (b).

(b) DETERMINATION OF RESPONSIBILITY.—

(1) IN GENERAL.—With respect to any year 2000 claim, the court shall instruct the jury to answer special interrogatories, or if there is no jury, shall make findings, with respect to each defendant and plaintiff, and each of the other persons claimed by any of the parties to have caused or contributed to the loss incurred by the plaintiff, including (but not limited to) persons who have entered into settlements with the plaintiff or plaintiffs, concerning the percentage of responsibility of the defendant, the plaintiff, and each such person, measured as a percentage of the total fault of all persons who caused or contributed to the total loss incurred by the plaintiff.

(2) CONTENTS OF SPECIAL INTERROGATORIES OR FINDINGS.—The responses to interrogatories, or findings, as appropriate, under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each person found to have caused or contributed to the loss incurred by the plaintiff or plaintiffs.

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

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

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff or plaintiffs.

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

SEC. 302. LIMITATION ON BYSTANDER LIABILITY FOR YEAR 2000 FAILURES.

(a) IN GENERAL.—With respect to any year 2000 claim for money damages in which—

(1) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the year 2000 failure at issue,

(2) the plaintiff is not in substantial privity with the defendant, and

(3) the defendant's actual or constructive awareness of an actual or potential year 2000 failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(b) SUBSTANTIAL PRIVITY.—For purposes of subsection (a)(2), a plaintiff and a defendant are in substantial privity when, in a year 2000 claim arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(c) CERTAIN CLAIMS EXCLUDED.—For purposes of subsection (a)(3), claims in which the defendant's actual or constructive awareness of an actual or potential year 2000 failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

SEC. 303. REASONABLE EFFORTS DEFENSE.

With respect to any year 2000 claim seeking money damages, except with respect to claims asserting breach or repudiation of contract—

(1) the fact that a year 2000 failure occurred in an entity, facility, system, product, or component that was sold by, leased by, rented by, or otherwise within the control of the party against whom the claim is asserted shall not constitute the sole basis for recovery; and

(2) the party against whom the claim is asserted shall be entitled to establish, as a complete defense to the claim, that it took measures that were reasonable under the circumstances to prevent the year 2000 failure from occurring or from causing the damages upon which the claim is based.

SEC. 304. DAMAGES LIMITATION.

(a) STANDARD FOR AWARDS.—With respect to any year 2000 claim for which punitive damages may be awarded under applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that conduct carried out by the defendant showed a conscious, flagrant indifference to the rights or safety of others and was the proximate cause of the harm or loss that is the subject of the year 2000 claim. This requirement is in addition to any other requirement in applicable law for the award of such damages.

(b) CAPS ON PUNITIVE DAMAGES.—

(1) IN GENERAL.—With respect to any year 2000 claim, if a defendant is found liable for punitive damages, the amount of punitive damages that may be awarded to a plaintiff shall not exceed the greater of—

(A) 3 times the amount awarded to the plaintiff for compensatory damages; or

(B) $250,000.

(2) SPECIAL RULE.—

(A) IN GENERAL.—Notwithstanding paragraph (1), with respect to any year 2000 claim, if the defendant is found liable for punitive damages and the defendant—

(i) is an individual whose net worth does not exceed $500,000,

(ii) is an owner of an unincorporated business that has fewer than 25 full-time employees, or

(iii) is—

(I) a partnership,

(II) corporation,

(III) association,

(IV) unit of local government, or

(V) organization,

that has fewer than 25 full-time employees,

the amount of punitive damages shall not exceed the lesser of 3 times the amount awarded to the plaintiff for compensatory damages, or $250,000.

(B) APPLICABILITY.—For purposes of determining the applicability of this paragraph to a corporation, the number of employees of a subsidiary of a wholly owned corporation shall include all employees of a parent corporation or any subsidiary of that parent corporation.

(3) APPLICATION OF LIMITATIONS BY THE COURT.—The limitations contained in paragraphs (1) and (2) shall be applied by the court and shall not be disclosed to the jury.

SEC. 305. RECOVERY OF ECONOMIC DAMAGES FOR YEAR 2000 CLAIMS.

(a) LIMITATION ON RECOVERY OF ECONOMIC LOSSES.—Subject to subsection (b), a plaintiff making a year 2000 claim alleging a nonintentional tort may recover economic losses only upon establishing, in addition to all other elements of the claim under applicable law, that any one of the following circumstances exists:

(1) The recovery of such losses is provided for in a contract to which the plaintiff is a party.

(2) Such losses are incidental to a year 2000 claim based on damage to tangible personal or real property caused by a year 2000 failure (other than damage to property that is the subject of a contract between the parties involved in the year 2000 claim).

(b) RECOVERY MUST BE PERMITTED UNDER APPLICABLE LAW.—Economic losses shall be recoverable under this section only if applicable Federal law, or applicable State law embodied in statute or controlling judicial precedent as of January 1, 1999, permits the recovery of such losses.

SEC. 306. LIABILITY OF OFFICERS AND DIRECTORS.

(a) IN GENERAL.—A director, officer, or trustee of a business or other organization (including a corporation, unincorporated association, partnership, or nonprofit organization) shall not be personally liable with respect to any year 2000 claim in his or her capacity as a director or officer of the business or organization for an aggregate amount that exceeds the greater of—

(1) $100,000; or

(2) the amount of cash compensation received by the director or officer from the business or organization during the 12-month period immediately preceding the act or omission for which liability was imposed.

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be deemed to impose, or to permit the imposition of, personal liability on any director, officer, or trustee in excess of the aggregate amount of liability to which such director, officer, or trustee would be subject under applicable State law in existence on January 1, 1999 (including any charter or bylaw authorized by such State law).

TITLE IV—YEAR 2000 CLASS ACTIONS

SEC. 401. MINIMUM INJURY REQUIREMENT.

(a) IN GENERAL.—In any year 2000 action involving a year 2000 claim that a product or service is defective, the action may be maintained as a class action in Federal or State court as to that claim only if it satisfies all other prerequisites established by applicable Federal or State law and the court also finds that the alleged defect in the product or service was a material defect as to a majority of the members of the class.

(b) DETERMINATION BY COURT.—As soon as practicable after the commencement of a year 2000 action involving a year 2000 claim that a product or service is defective and that is brought as a class action, the court shall determine by order whether the requirement set forth in subsection (a) is satisfied. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

SEC. 402. NOTIFICATION.

(a) NOTICE BY MAIL.—In any year 2000 action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class by United States mail, return receipt requested. Persons whose actual receipt of the notice is not verified by the court or by counsel for one of the parties shall be excluded from the class unless those persons inform the court in writing, on a date no later than the commencement of trial or entry of judgment, that they wish to join the class.

(b) CONTENTS OF NOTICE.—In addition to any information required by applicable Federal or State law, the notice described in this subsection shall—

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

(2) identify the jurisdiction whose law will govern the action and where the action is pending;

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

(4) describe the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted; and

(5) describe the procedure for opting out of the class.

(c) SETTLEMENT.—The parties to a year 2000 action that is brought as a class action may not enter into, nor request court approval of, any settlement or compromise before the class has been certified.

SEC. 403. DISMISSAL PRIOR TO CERTIFICATION.

Before determining whether to certify a class in a year 2000 action, the court may decide a motion to dismiss or for summary judgment made by any party if the court concludes that decision will promote the fair and efficient adjudication of the controversy and will not cause undue delay.

SEC. 404. FEDERAL JURISDICTION IN YEAR 2000 CLASS ACTIONS.

(a) JURISDICTION.—Except as provided in subsection (b), a year 2000 action may be brought as a class action in the United States district court or removed to the appropriate United States district court if the amount in controversy is greater than the sum or value of $1,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action.

(b) EXCEPTION.—A year 2000 action shall not be brought or removed as a class action under this section if—

(1)(A) the substantial majority of the members of the proposed plaintiff class are citizens of a single State of which the primary defendants are also citizens; and

(B) the claims asserted will be governed primarily by the laws of that State; or

(2) the primary defendants are States, State officials, or other governmental entities against whom the United States district court may be foreclosed from ordering relief.

TITLE V—CLIENT PROTECTION IN CONNECTION WITH YEAR 2000 ACTIONS

SEC. 501. SCOPE.

This title applies to any year 2000 action asserted or brought in Federal or State court.

SEC. 502. DEFINITIONS.

In this title:

(1) ATTORNEY.—the term ''attorney'' means any natural person, professional law association, corporation, or partnership authorized under applicable State law to practice law.

(2) ATTORNEY'S SERVICES.—The term ''attorney's services'' means the professional advice or counseling of or representation by an attorney, but such term shall not include other assistance incurred, directly or indirectly, in connection with an attorney's services, such as administrative or secretarial assistance, overhead, travel expenses, witness fees, or preparation by a person other than the attorney of any study, analysis, report, or test.

(3) CONTINGENT FEE.—The term ''contingent fee'' means the cost or price of an attorney's services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained.

(4) HOURLY FEE.—The term ''hourly fee'' means the cost or price per hour of an attorney's services.

(5) RETAIN.—The term ''retain'' means the act of a client in engaging an attorney's services, whether by express or implied agreement, by seeking and obtaining the attorney's services.

SEC. 503. CONSUMER'S RIGHT TO UP-FRONT DISCLOSURE OF INFORMATION REGARDING FEES AND SETTLEMENT PROPOSALS.

Before being retained by a client with respect to a year 2000 claim or a year 2000 action, an attorney shall disclose to the client the client's rights under this title and the client's right to receive a written statement of the information described under sections 504 and 505.

SEC. 504. INFORMATION AFTER INITIAL MEETING.

(a) WRITTEN DISCLOSURE OF FEES.—Within 30 days after the disclosure described under section 503, an attorney retained by a client with respect to a year 2000 claim or a year 2000 action shall provide a written statement to the client setting forth—

(1) in the case of an attorney retained on an hourly basis, the attorney's hourly fee for services in pursuing the year 2000 claim or year 2000 action and any conditions, limitations, restrictions, or other qualifications on the fee, including likely expenses and the client's obligation for those expenses; and

(2) in the case of an attorney retained on a contingent fee basis, the attorney's contingent fee for services in pursuing the year 2000 claim or year 2000 action and any conditions, limitations, restrictions, or other qualifications on the fee, including likely expenses and the client's obligation for those expenses.

(b) CONSUMER'S RIGHT TO TIMELY UPDATED INFORMATION ABOUT FEES.—In addition to the requirements contained in subsection (a), in the case of an attorney retained on an hourly basis, the attorney shall also render regular statements (at least once each 90 days) to the client containing a description of hourly charges and expenses incurred in the pursuit of the client's year 2000 claim or year 2000 action by each attorney assigned to the client's matter.

SEC. 505. CONSUMER'S RIGHT TO TIMELY UPDATED INFORMATION ABOUT SETTLEMENT PROPOSALS AND DETAILED STATEMENT OF HOURS AND FEES.

An attorney retained by a client with respect to a year 2000 claim or a year 2000 action shall advise the client of all written settlement offers to the client and of the attorney's estimate of the likelihood of achieving a more or less favorable resolution to the year 2000 claim or year 2000 action, the likely timing of such resolution, and the likely attorney's fees and expenses required to obtain such a resolution. An attorney retained by a client with respect to a year 2000 claim or a year 2000 action shall, within a reasonable time not later than 60 days after the date on which the year 2000 claim or year 2000 action is finally settled or adjudicated, provide a written statement to the client containing—

(1) in the case of an attorney retained on an hourly basis, the actual number of hours expended by each attorney on behalf of the client in connection with the year 2000 claim or year 2000 action, the attorney's hourly rate, and the total amount of hourly fees; and

(2) in the case of an attorney retained on a contingent fee basis, the total contingent fee for the attorney's services in connection with the year 2000 claim or year 2000 action.

SEC. 506. CLASS ACTIONS.

An attorney representing a class or a defendant in a year 2000 action maintained as a class action shall make the disclosures required under this title to the presiding judge, in addition to making such disclosures to each named representative of the class. The presiding judge shall, at the outset of the year 2000 action, determine a reasonable attorney's fee by determining the appropriate hourly rate and the maximum percentage of the recovery to be paid in attorney's fees. Notwithstanding any other provision of law or agreement to the contrary, the presiding judge shall award attorney's fees only pursuant to this title.

SEC. 507. AWARD OF REASONABLE COSTS AND ATTORNEY'S FEES AFTER AN OFFER OF SETTLEMENT.

(a) OFFER OF SETTLEMENT.—With respect to any year 2000 claim, any party may, at any time not less than 10 days before trial, serve upon any adverse party a written offer to settle the year 2000 claim for money or property, including a motion to dismiss the claim, and to enter into a stipulation dismissing the claim or allowing judgment to be entered according to the terms of the offer. Any such offer, together with proof of service thereof, shall be filed with the clerk of the court.

(b) ACCEPTANCE OF OFFER.—If the party receiving an offer under subsection (a) serves written notice on the offeror that the offer is accepted, either party may then file with the clerk of the court the notice of acceptance, together with proof of service thereof.

(c) FURTHER OFFERS NOT PRECLUDED.—The fact that an offer under subsection (a) is made but not accepted does not preclude a subsequent offer under subsection (a). Evidence of an offer is not admissible for any purpose except in proceedings to enforce a settlement, or to determine costs and expenses under this section.

(d) EXEMPTION OF CLAIMS.—At any time before judgment is entered, the court, upon its own motion or upon the motion of any party, may exempt from this section any year 2000 claim that the court finds presents a question of law or fact that is novel and important and that substantially affects nonparties. If a claim is exempted from this section, all offers made by any party under subsection (a) with respect to that claim shall be void and have no effect.

(e) PETITION FOR PAYMENT OF COSTS, ETC.—If all offers made by a party under subsection (a) with respect to a year 2000 claim, including any motion to dismiss the claim, are not accepted and the dollar amount of the judgment, verdict, or order that is finally issued (exclusive of costs, expenses, and attorneys' fees incurred after judgment or trial) with respect to the year 2000 claim is not more favorable to the offeree with respect to the year 2000 claim than the last such offer, the offeror may file with the court, within 10 days after the final judgment, verdict, or order is issued, a petition for payment of costs and expenses, including attorneys' fees, incurred with respect to the year 2000 claim from the date the last such offer was made or, if the offeree made an offer under this section, from the date the last such offer by the offeree was made.

(f) ORDER TO PAY COSTS, ETC.—If the court finds, pursuant to a petition filed under subsection (e) with respect to a year 2000 claim, that the dollar amount of the judgment, verdict, or order that is finally issued is not more favorable to the offeree with respect to the year 2000 claim than the last such offer, the court shall order the offeree to pay the offeror's costs and expenses, including attorneys' fees, incurred with respect to the year 2000 claim from the date the last offer was made or, if the offeree made an offer under this section, from the date the last such offer by the offeree was made, unless the court finds that requiring the payment of such costs and expenses would be manifestly unjust.

(g) AMOUNT OF ATTORNEY'S FEES.—Attorney's fees under subsection (f) shall be a reasonable attorney's fee attributable to the year 2000 claim involved, calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the attorney's fees under subsection (f) may not exceed—

(A) the actual cost incurred by the offeree for an attorney's fee payable to an attorney for services in connection with the year 2000 claim; or

(B) if no such cost was incurred by the offeree due to a contingency fee agreement, a reasonable cost that would have been incurred by the offeree for an attorney's noncontingent fee payable to an attorney for services in connection with the year 2000 claim.

(h) INAPPLICABILITY TO EQUITABLE REMEDIES.—This section does not apply to any claim seeking an equitable remedy.

(i) INAPPLICABILITY TO CLASS ACTIONS.—This section does not apply with respect to a year 2000 action brought as a class action.

SEC. 508. ENFORCEMENT OF CONSUMER PROTECTION RULES IN YEAR 2000 CLAIMS AND ACTIONS.

A client whose attorney fails to comply with this title may file a civil action for damages in the court in which the year 2000 claim or year

2000 action was filed or could have been filed or other court of competent jurisdiction. The remedy provided by this section is in addition to any other available remedy or penalty.

The CHAIRMAN. No amendment to that amendment shall be in order except those printed in part 2 of House Report 106–134. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment except as specified in the report, and shall not be subject to a demand for division of the question.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider amendment No. 1 printed in part 2 of House Report 106–134.

AMENDMENT NO. 1 OFFERED BY MR. DAVIS OF VIRGINIA

Mr. DAVIS of Virginia. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. DAVIS of Virginia:

Page 4, add the following after line 23 and redesignate succeeding paragraphs accordingly:

(2) DAMAGES.—The term ''damages'' means punitive, compensatory, and restitutionary relief.

Page 8, line 18, strike ''February 22, 1999'' and insert ''January 1, 1999''.

The CHAIRMAN. Pursuant to House Resolution 166, the gentleman from Virginia (Mr. DAVIS) and the gentleman from Virginia (Mr. BOUCHER) each will control 10 minutes.

The Chair recognizes the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment does several things.

First of all, it changes the effective date of the legislation from the arbitrary date of February 22, 1999, the date of the final draft, to January 1, 1999. We think this makes sense. Sections 201(a) and 202(a) of the bill addresses a Year 2000 action involving contracts as of the date of January 1, 1999, as the effective date of those actions. This language would make all such actions consistent with that date. Changing the effective date of the overall legislation simply makes H.R. 775 consistent within itself.

In addition, the Senate version of the legislation, S. 96, has already changed its effective date to January 1, 1999. So this action will aid in the consistency and ease for enactment as the two Houses get together and iron out any difficulties in the legislation, so we would make that consistent.

The second part of this amendment completes a needed definition to the term ''damages'' that was left out of the bill.

□ 1300

The amendment defines damage to mean punitive, compensatory and restitutionary relief. The bill clearly proposes to require detailed pleading of the bases of Year 2000 lawsuits to reduce claims that could have been avoided by a plaintiff's own timely actions and to curtail the recovery of money damages in designated circumstances.

The intent here is to be broad, but there is a type of monetary relief that the term ''damages'' generally does not include. Many States allow awards that are restitutionary in nature, allowing plaintiffs to recover money that is not based on a proven loss but on what it will take to make the plaintiff whole.

This language is more inclusive and allows a broader definition of damage, something I would hope the other side would accept.

This amendment will clarify that restitution and damages accomplish the same purpose for the purposes of this bill. This will clarify the point for courts on down the line so that a bill that is designed to limit litigation does not spawn more of it because of confusion over definitions, and it makes it consistent.

Mr. Chairman, I reserve the balance of my time.

Mr. BOUCHER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to the amendment. My principal concern with the amendment offered by the gentleman from Virginia (Mr. DAVIS) is that it moves the retroactive date for the effectiveness of the provisions contained in H.R. 775 to January 1, 1999, and all lawsuits filed since January 1, 1999 that fall within the general ambit of H.R. 775 would then be subjected to these new rules.

In addition to the general constitutional and fairness questions that concern applying new legal restrictions to lawsuits that have already been brought, I think this amendment raises a whole host of legal uncertainties.

For example, what happens to suits that have been filed which did not undergo the 90-day cooling off period? What about class actions that have already been filed and certified? What about cases that have been filed that did not meet the heightened pleading standard that is set forth in the bill? How would this early date affect settlements that have been achieved and that are now pending court approval?

I have worked in the years that I have been in the House of Representatives on a number of tort reforms and have supported the enactment of several of them that are law today. These include the General Aviation Liability Act and the Volunteer Protection Act. These bills were carefully crafted. They were very bipartisan and we always sought to avoid the very problems concerning retroactivity that I am raising at this time.

So while I understand the motivation of the gentleman from Virginia (Mr. DAVIS) and I commend him for the leadership that he has shown in bringing a whole set of important concerns here today, it is with reluctance but with determination nonetheless that I rise in opposition to this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. DAVIS of Virginia. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, many of the issues that have been brought to mind by my friend, the gentleman from Virginia (Mr. BOUCHER), apply to the February 22 date as well, which is currently in the legislation. Any litigation that commenced after that date, the same concerns that the gentleman from Virginia (Mr. BOUCHER) raises would apply to that. So whether it is February 22 or January 1 really does not make any difference for the majority of those concerns.

What this does do is that litigation that is filed between January 1 and February 22 would come under the ambit of this legislation, and it is that window of 6 weeks or 7 weeks where there may be pending legislation that would be affected under this, but as to the other concerns, regardless of whether this amendment passes or not, his concerns I think remain.

We, of course, need an enactment date. We are trying to make it internally consistent so we do not have one day for enactment for contracts that were entered into and another for tort. We just think this makes it more internally consistent at this point. Again, it is consistent with the Senate version that is currently pending there.

In addition to that, I would hope the gentleman would not have any problem with the second part of this amendment that talks about the term ''damages'' and broadens that in a way that I think clarifies it with existing State law.

Mr. DAVIS of Virginia. Mr. Chairman, I yield back the balance of my time.

Mr. BOUCHER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. DAVIS).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in part 2 of House Report 106–134.

AMENDMENT NO. 2 OFFERED BY MR. MORAN OF VIRGINIA

Mr. MORAN of Virginia. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. MORAN of Virginia:

Page 9, strike lines 3 through 5 and insert the following:

(c) EXCLUSION OF PERSONAL INJURY CLAIMS.—None of the provisions of this Act shall apply to any claim based on personal injury, including any claim asserted by way of claim, counterclaim, cross-claim, third-party claim, or otherwise, that arises out of an underlying action for personal injury.

Page 9, insert the following after line 9:

(e) CERTAIN OTHER ACTIONS.—A person who is liable for damages, whether by settlement or judgment, in a claim or civil action to which this Act does not apply by reason of subsection (c) and whose liability, in whole or in part, is the result of a year 2000 failure may pursue any remedy otherwise available under Federal or State law against the person responsible for that year 2000 failure to the extent of recovering the amount of those damages. Any such remedy shall not be subject to this Act.

The CHAIRMAN. Pursuant to House Resolution 166, the gentleman from Virginia (Mr. MORAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment clarifies and ensures the intent of the sponsors of this bill regarding the exemption of personal injury claims. The amendment addresses possible unintended liability for defendants, including doctors and other health care providers.

Under the existing legislation, personal injury actions are excluded from the scope of the act, but there is some uncertainty regarding its impact on defendants in such claims. So this proposed amendment would clarify that defendants, including physicians or other health care providers, who incur personal injury liability caused by a Y2K defect would be able to recover from the manufacturer of the malfunctioning product to the extent of those damages.

The amendment makes it clear that none of the provisions of H.R. 775 shall apply to any claim based on personal injury, including any claim asserted by way of counterclaim, cross claim or third party claim, and will make sure that third party defendants brought into Y2K personal injury claims are not provided with the liability protections of this legislation.

The amendment further clarifies the original intent of the legislation, and that is why I do not believe there is any opposition to it. I think it strengthens and balances it, and I would ask my colleagues to support it.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does any Member claim the time in opposition to the amendment?

The Chair recognizes the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Virginia (Mr. MORAN) for yielding me this time.

Mr. Chairman, I rise for the purpose of encouraging support for his amendment. I think it represents a step forward in clarifying that actions for personal injuries are excluded from the provisions of the bill. It is a worthwhile provision and I encourage support for it.

Mr. MORAN of Virginia. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, let me just commend the gentleman for offering this amendment. I think it is not only just a clarification, it is in the spirit. I think the most obvious example was the case of malfunctioning equipment in a hospital that injures a patient. If a defendant's doctor or hospital made a claim against a responsible third party, this amendment makes sure that that party would not be able to claim the liability protections under this legislation that are available to the doctor or the hospital.

It is a good clarification. I commend the gentleman and ask my colleagues to support it.

Mr. MORAN of Virginia. Mr. Chairman, I yield myself my remaining time to make a general statement on the bill, having decided previously that it may be more efficient to make the statement while I was speaking on my amendment.

Mr. Chairman, unless this legislation is enacted, the costs associated with year 2000 lawsuits will pose a very serious threat to our Nation's continued economic prosperity as we enter the new millennium. It is absolutely essential that individuals and companies that suffer legitimate economic injuries due to Y2K disruptions retain the right to sue. Left unchecked, strident litigators could discourage preventative action by businesses and stifle innovation and economic growth.

That is why I believe that this is reasonable, bipartisan legislation that will lessen the economic impact of this Y2K potential problem, encourage businesses to fix their problems now and help to ensure a balanced, fair and efficient outcome to Y2K litigation.

Excessive litigation and the potential negative impact on targeted industries threaten the jobs of American workers and the position of American industries in the world market. Unless legislation is enacted quickly, Y2K-related problems could result in more than a trillion dollars in litigation expenses.

It has been estimated by one technology association that the amount of litigation associated with Y2K will be two to three dollars for every dollar that will actually be spent fixing the problem. In fact, a panel of experts at the American Bar Association's last annual meeting predicted that legal costs associated with Y2K suits could exceed that of litigation over asbestos, breast implants, tobacco and Superfund liability combined.

Think about that. That is more than three times the total annual estimated cost of all civil litigation in the United States. It is inconceivable that this could occur without serious long-term damage to the United States economy.

Currently, American businesses, governments and other organizations are tirelessly working to correct potential Y2K failures, but as diligently as we work on this problem it is nevertheless a daunting task. It involves reviewing, testing and correcting billions of lines of computer code.

It has been estimated by the Federal Reserve that the U.S. Government will spend over $30 billion to correct its computers and American businesses will spend an estimated $50 billion to reprogram theirs. Regardless of all the efforts and all the money, some failures are bound to occur.

This legislation does not protect companies that have reason to know they will have failures and do nothing to correct them. Even companies that simply run out of time will still be liable for economic damages that they cause. We have to understand that many of the Y2K computer failures will occur because of the interdependency of the United States in world economies. Every Y2K failure will have a compounding effect on other organizations that are dependent upon it.

Those disruptions, in turn, cause further disruptions to other interdependent organizations and individuals. In other words, we will have an exponential domino effect. That is what we have to worry about.

Many of those organizations, whether they are compliant or noncompliant, will nevertheless find themselves suing and being sued for the entire amount of damages caused by the business interruptions. That will create a substantial drag on our economy if we do not intervene, at least with this legislation.

Every dollar that is spent on litigation and frivolous lawsuits is a dollar that cannot be used to invest in new equipment, pay skilled workers, train them or pay dividends to shareholders.

In addition to the potentially huge costs of litigation, there is another unique element to this Y2K problem. In contrast to other problems that affect some businesses or even entire industries engaging in damaging activity, this Y2K problem affects all aspects of the economy, especially our most productive high tech industries.

In the words of Robert Atkinson of the Progressive Policy Institute, it is a unique one-time event, best understood as an incomparable societal problem rooted in the early stages of this entire Nation's transformation to the digital economy.

This is something we can see coming. We need to act now so that it does not have the kind of adverse consequences that it potentially could have.

This bill, I emphasize, does not prevent economic damage recoveries. Injured plaintiffs will still be able to recover all of their damages and defendant companies will still be held liable

for the entire amount of economic damages they cause. In addition, all personal injury claims are totally exempt from this legislation.

So it is time for Congress to protect American jobs and industry with this legislation. It has been endorsed by impressive coalitions of over 300 organizations, including the Information Technology Industry Council, the Business Software Alliance, the National League of Cities, the Information Technology Association of America. It is a very wide array of public and private sector organizations representing both likely plaintiffs and defendants.

On May 7, Alan Greenspan was quoted in the Post as saying that an unexpected leap in technology is primarily responsible for the Nation's phenomenal economic performance and the current extraordinary combination of strong growth, low unemployment, low inflation, high corporate profits and soaring stock prices.

The goal of this Congress should be to encourage economic growth and innovation, not to foster predatory legal tactics that will only compound the damage of this one-time national crisis.

Congress owes it to the American people to do everything we can to lessen the economic impact of the worldwide Y2K problem, lead the rest of the world and not let it unnecessarily become a litigation bonanza.

In his State of the Union address, President Clinton urged Congress to find solutions that would make the year 2000 computer program the last headache of the 20th century rather than the first crisis of the 21st.

The Year 2000 Readiness and Responsibility Act is an important part of the solution. By promoting remediation over unnecessary litigation, we can help bring in the next millennium with continued economic growth and prosperity. That is why I support this fair bipartisan bill, and I urge the support of my colleagues for this bill as well as for the amendment immediately before us.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. MORAN).

The amendment was agreed to.

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The CHAIRMAN. It is now in order to consider amendment No. 3 printed in part 2 of House Report 106–134.

AMENDMENT NO. 3 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. JACKSON-LEE of Texas:

Page 10, line 10, strike ''Except'' and insert the following: ''The notice under this subsection does not require descriptions of technical specifications or other technical details with respect to the material defect at issue. Except''.

The CHAIRMAN. Pursuant to House Resolution 166, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me thank my committee members for considering this amendment, and particularly I ask my colleagues to join me in supporting the amendment that I offer this afternoon.

Mr. Chairman, this amendment is a simple and noncontroversial one, I would hope, supported by both the U.S. Chamber of Commerce and the American Trial Lawyers Association, and one which I hope this House can support unanimously.

My amendment simply clarifies the notification provisions in this bill, which regulate the filing of claims brought against defendants by the Y2K bug-related transgressions.

Under section 101 of H.R. 775, a plaintiff who is filing a year 2000 action must notify each perspective defendant of their impending action before their lawsuit can actually be filed. This is called a cooling off provision.

Under the terms of that provision, the notification must contain, stated with particularity, the symptoms of the material defect, the alleged harm, the facts that show causation, the relief sought, and a contact person who has the authority to mediate the dispute.

My amendment merely makes it crystal clear that in this initial notification document, that the particularity requirement does not exclude the use of layman's terms when providing notification to the defendant.

Mr. Chairman, in one of our hearings on this particular legislation in the Committee on the Judiciary, and I also participated in some in the Committee on Science, we heard from a storekeeper who ran a fruit grocery store, if you will, and his expressions were very instructive to me. It is the day-to-day businesses that have to deal with this issue. It is the flower shop, the bakery shop, the grocery store, it is the small law office or physician's office. We think it is extremely important that those laymen not have the burden of talking in technologese in order to make their point.

As a Member who sits on both the Committee on the Judiciary and the Committee on Science, and who has sat through numerous hearings on the Millennium bug, I know issues relating to the Y2K bug can be very complex. I know not everybody is a Y2K expert. I understand that not everyone can be expected to tell the difference between a flashable BIOS and firmware, or between an embedded chip and integrated chipset.

That is why many businesses have decided, rather than to tackle the Y2K bug on their own, to hire a Y2K specialist to help them work through this rough transition. If, when all is said and done, they realize that their equipment or software is not Y2K compliant, the first problem they will face is trying to figure out what went wrong. This will be a difficult problem to solve if the entity they are seeking a response from is not cooperating and they do not have the technical wherewithal to solve the problem themselves.

This problem can only be exacerbated if a court were to interpret the particularity requirement in the notification provision in this bill to mean that plaintiffs who bring causes of action must provide technical details about what caused the failure of their computer system, something that most will be unable to do without hiring another Y2K bug expert.

We can fix this problem, Mr. Chairman, and save these claimants a great deal of money by passing this amendment today.

The language in my amendment will also save individuals and businesses the additional expenses of hiring a technically savvy attorney before they can bring this type of action. As an attorney, Mr. Chairman, I am not looking to put attorneys out of business, but I certainly think it is important to speak on behalf of our small businesses across America and let them write out what they think the problem is, the machine just does not work, and have that be sufficient notice. It will also save them a great deal of trouble if they live or do business in an area where such lawyers are tough to find.

This amendment protects small businesses by letting them give their notification in their own straightforward terms, no technical experts needed. Maybe later on, but not at this juncture.

This is a commonsense and bipartisan amendment that truly improves this bill. I urge all of my colleagues to vote aye. I hope we can stand up for the small businesses of America.

Mr. Chairman, today I rise to offer an amendment to H.R. 775, the Year 2000 Readiness and Responsibility Act of 1999. This amendment is a simple and non-controversial one, supported by both the U.S. Chamber of Commerce and the American Trial Lawyers Association, and one which I hope can be accepted by this House unanimously.

My amendment simply clarifies the notification provisions in this bill, which regulate the filing of claims brought against defendants for Y2K bug-related transgressions. Under Section 101 of H.R. 775, a plaintiff who is filing a Year 2000 action, must notify each prospective defendant of their impending action before their lawsuit can actually be filed. This is the so-called ''cooling off'' provision. Under the terms of that provision, the notification must contain, stated ''with particularity''—the (1) symptoms of the material defect; (2) the alleged harm; (3) the facts that show causation; (4) the relief sought, and (5) a contact person who has the authority to mediate the dispute.

My amendment merely makes it crystal clear that in this initial ''notification'' document,

that the ''particularity requirement'' does not exclude the use of layman's terms when providing notification to the defendant.

As a Member who sits on both the Judiciary and Science Committees, and who has sat through numerous hearings on the Millennium Bug, I know that issues related to the Y2K bug can be very complex. I know that not everybody is a Y2K expert. I understand that not everyone can be expected to tell the difference between a flashable BIOS and firmware, or between an embedded chip and an integrated chipset.

That is why many businesses have decided, rather than to tackle the Y2K bug on their own, to hire a Y2K specialist to help them work through this rough transition period. If when all is said and done, they realize that their equipment or software is not Y2K complaint, the first problem they will face is trying to figure out what went wrong. This will be a difficult problem to solve if the entity that they are seeking a response from is not cooperating—and they do not have the technical wherewithal to solve the problem themselves.

This problem can only be exacerbated if a court were to interpret the ''particularity'' requirement in the notification provision in this bill to mean that plaintiffs who bring causes of action must provide technical details about what caused the failure of their computer system—something that most will be unable to do without hiring another Y2K bug expert. We can fix this problem, and save these claimants a great deal of money, by passing this amendment today.

The language in my amendment will also save individuals and businesses the additional expense of hiring a technically savvy attorney before they can bring this type of action. And it will also save them a great deal of trouble if they live or do business in an area where such lawyers are tough to find. This amendment protects small businesses by letting them give their notification in their own straightforward terms—no technical experts needed.

This is a common sense and bi-partisan amendment that truly improves this bill, and I urge all of you to support it with an ''aye'' vote.

Mr. GOODLATTE. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentlewoman for yielding. I commend her for her amendment, which I think is a positive addition to the legislation. I support it. We will accept the amendment.

Mr. BOUCHER. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Virginia.

Mr. BOUCHER. Mr. Chairman, I thank the gentlewoman for yielding to me, and I want to commend her for bringing this amendment to the House. This makes important changes that assure that commonly-used, everyday language can be embodied in the notice that is sent that would trigger the cooling-off period. I think it definitely improves the bill, and would encourage support for it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to thank both gentlemen from Virginia for their leadership on this issue. I also thank the gentlewoman from California (Ms. LOFGREN) and the gentleman from Michigan (Mr. CONYERS) for the amendment they will offer and I intend to support.

Let us try to work together to ensure that we do the very best in this instance for Y2K.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in part 2 of House Report 106–134.

AMENDMENT NO. 4 OFFERED BY MR. SCOTT

Mr. SCOTT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. SCOTT:

Page 23, strike line 1 and all that follows through page 25, line 8, and redesignate succeeding sections, and references thereto, accordingly.

The CHAIRMAN. Pursuant to House Resolution 166, the gentleman from Virginia (Mr. SCOTT) and the gentleman from Virginia (Mr. GOODLATTE) each will control 10 minutes.

The Chair recognizes the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, I yield myself such time as I may consume.

This amendment would eliminate section 304 of the bill. That section, if it is not removed, would overturn the discretion of States to determine when and how punitive damages should be paid, and prescribes an inflexible Federal standard and process for arbitrarily limiting such awards.

The bill overturns State punitive damage laws without any findings that they are inadequate or inappropriate. In fact, States have found punitive damages to be an effective tool in preventing and correcting reckless or wanton actions on the part of designers, manufacturers, and distributors of products sold to their citizens.

One of the usual rationales for federalizing an area of the law that has been historically left to the States is that we want to promote uniformity in State laws across the Nation. However, this rationale is violated in this very case because States which do not allow punitive damages are not required to adopt them, and those with lower limits are not required to raise them to a uniform level. Therefore, wide differences in punitive damages will continue under this bill.

There is no indication that there are too many punitive damages awarded. The standards in States for awarding punitive damages, those standards are very high as it is. Generally, they require intentional, reckless, and wanton behavior which threatens the health and safety of innocent people.

In fact, between 1965 and 1990, one study only found 355 such awards across the country in product liability cases, and more than half of those were reduced or overturned on appeal.

States provide for punitive damages because they know that the mere threat of a large punitive damages award discourages reckless or malicious harm to consumers. Moreover, limiting punitive damages awards could cause reckless and malicious defendants to conclude that it is more cost-effective to risk paying limited amounts than to prevent or correct the problems that they are causing in the first place.

This was precisely the rationale employed by the Ford Motor Company regarding its Pinto. In Grisham vs. Ford Motor Company, it was found that the company determined that it would be cheaper to sell the defectively-designed car and risk paying damage awards to injured consumers than it would be to make the car significantly safer at a cost of $11 per car.

Or we have another example where in 1980 a 4-year-old girl received permanent scars, second- and third-degree burns, when the pajamas she was wearing caught fire, and it was only after punitive damages were assessed that the company stopped manufacturing flammable pajamas.

Clearly, the threat of punitive damages protects consumers from such profit-oriented calculations. In fact, in nearly 80 percent of the product liability cases in which punitive damages were awarded, the manufacturer made safety changes which subsequently protected future customers. Without this amendment, the bill will serve to protect those who would act irresponsibly because there is less incentive for them to take corrective action.

Whatever Members' views are on the merits of limiting the discretion of States to determine their punitive damage laws, there is no justification for singling out the information technology industry for such treatment.

It is clear that efforts to limit punitive damage awards and other provisions of the bill, such as limitations on joint and several liability, have more to do with pushing a general tort reform agenda than it does with addressing Y2K problems.

Unfortunately, Congress is again allowing itself to be used by the most powerful side of a legal dispute in jerryrigging laws in their favor. Congress should not act as an alternative appellate court only available to those whose political clout is effective enough to cause a legislative change quickly enough to benefit their case.

We have done that frequently in the past, and this amendment will allow us to continue to rely upon the States to know what is best to protect their consumers and the interests of businesses, and to balance those interests. Of all the pressing needs of Congress today, we should not be limiting the discretion of States to protect consumers.

I urge my colleagues to allow States to continue to deter intentional, reckless, wanton, and fraudulent behavior by supporting this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am in strong opposition to this amendment. The punitive damage caps that are contained in this legislation are badly needed and entirely reasonable. They provide for $250,000 in punitive damages in each case, in each instance of liability, or three times the amount of economic loss that the plaintiff may have suffered, whichever is greater, except in the case of very small businesses with fewer than 25 employees, in which case, they can still suffer $250,000 in punitive damages or three times their economic loss, whichever is lesser.

The reasonable limits on punitive damages contained in H.R. 775 are very important. In many instances, the pleading of punitive damages amounts to an extortion threat to companies. Unfortunately, many companies settle those cases, although the company was not responsible for the damages alleged by the plaintiff.

The settlement occurs because the company does not want to take a chance in a legal lottery that could make it liable for millions of dollars in punitive damages when the actual harm alleged by the plaintiff is several orders of magnitude less.

Let me give an example. The May 11, 1999, editions of the Wall Street Journal and the Washington Times illustrate what can happen when a company decides to take a case to trial. A jury in Alabama has awarded $580 million in punitive damages against Whirlpool Corporation for a satellite dish loan program. The satellite dishes cost $1,124. In addition to the punitive damages, the two plaintiffs were awarded $975,000 for mental anguish. This type of outrageous award is what this legislation is trying to curtail.

Punitive damages are awarded primarily as punishment to a defendant. They are intended to deter a repeat of the offensive conduct. Punitive damages are not awarded to compensate losses or damage suffered by the plaintiff. But Y2K cases are unusual in that the conduct is not likely to occur again. That is because Y2K is going to resolve itself here with time. Thus, there is little deterrent value to awarding punitive damages. Without a deterrent effect, punitive damages serve only as a windfall to plaintiffs and attorneys.

Additionally, since we have eliminated personal injuries from coverage of the bill, the only harm caused by defendants will be economic damage, which can be appropriately compensated without the need for punitive award. Furthermore, excessive punitive damage awards will simply compound the economic impact of Y2K litigation, and the cost will be passed along to the public and consumers through higher prices.

In this situation, punitive damages truly become a lottery for the plaintiff. Thus, they should be limited. Our limitations of $250,000 or three times the economic loss cap are entirely reasonable. I urge my colleagues to oppose the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT. Mr. Chairman, I yield 3 minutes to my colleague, the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman for yielding time to me, and I am pleased to rise in support of the amendment offered by the gentleman from Virginia (Mr. SCOTT) which strikes the bill's cap on punitive damages.

Punitive damages impose punishment for conduct that is outrageous and deliberate, and it deters others from engaging in similar behavior. But the bill would cap punitive damages in Y2K actions at the greater of three times the amount of actual damages, or $250,000, and the lesser of these two amounts would be applicable if the defendant is a small business.

□ 1330

In addition, a plaintiff would have to prove by clear and convincing evidence that conduct carried out by the defendant showed a conscious, flagrant indifference to the rights or safety of others and was the proximate causes of the harm or the loss that is the subject of the Y2K claim.

Collectively, these restrictions on punitive damages are likely to completely eliminate not only the incentive for seeking punitive damages but any realistic possibility of obtaining them. These restrictions are counterproductive in that they provide the greatest amount of liability protection to the worst offenders, those who have done the least to resolve their Y2K problems.

In addition, absolute caps send a message to wrongdoers that it does not matter how harmful or malicious their behavior, they will never be liable for more than a set limit. These restrictions allow companies to ignore Y2K problems knowing that they can never be subjected to punitive damages for completely reckless and irresponsible behavior.

This is clearly not the signal that we ought to be sending during this crucial time for the making of Y2K remediation efforts. This is yet another issue that has very little to do with the Y2K problem.

While caps on punitive damages are not needed to address the genuine concerns of the Y2K transition, if the provision imposing the caps remains as a part of this bill, the bill will be vetoed. Given the limited amount of time that we have to put these changes and some genuinely needed protections into effect, the punitive damages cap seriously threatens our ability to provide as a legislative matter the protections that truly are needed.

So I am pleased to rise in support of the amendment offered by the gentleman from Virginia (Mr. SCOTT). In adopting this amendment, we will improve the product and enhance greatly the opportunity to provide the protections that really are needed to address the Y2K transition.

Mr. GOODLATTE. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, I rise in strong opposition to this amendment of the gentleman from Virginia (Mr. SCOTT). I think this guts the purpose of the bill. Without a punitive damage cap, one lawsuit can bring down some of the major emerging technology companies in this country.

The argument that it will be vetoed and, therefore, we have to let the White House write the bill I think is strained at best. How many times have my friends from the other side of the aisle heard this language and then heard the administration, whether it be Republican or Democrat, withdraw and end up signing a bill?

We overturned the administration on one tort liability issue in securities litigation. We overturned them because we had the votes here to do that as well.

If we start thinking about whatever the White House says we are going to do, then I think we can pack it up and go home, and we can forget about the separation of powers.

I think at the end of the day we are going to have a bill that the White House can sign. I think we will have a bill that will be good for American consumers, but we are also going to have a bill that protects American business.

One lawsuit without a cap on punitive damages can bring a major company down. It can bring them down. It can throw their employees out on the street, as they would have to fold up their tent. It will drive up the cost of insurance and drive up the cost of settlements. In driving up the cost of settlements on these suits, it spurs more lawsuits.

So where are we? We are where a number of groups and individuals who testified before these committees talked about. Estimates of anywhere between tens of billions to hundreds of billions of dollars, upwards of a trillion dollars of profits from these companies, instead of going to their employees, instead of going to get new products so we can compete in the global marketplace, can be tied up in litigation, lawsuits and attorneys fees, bringing down the fastest-growing segment of American economy. That is what this is about.

This amendment just guts the purpose of this bill. We may as well pack it up without some kind of punitive damage cap.

But I think the most disturbing thing about this amendment is the fact

that, for small businesses, we offer the protection of a $250,000 punitive damage cap. For small businesses, they take that out as well, and small business would be subjected to very high caps.

This jeopardizes every small business in America, which I think is why the National Federation of Independent Businesses, the Chamber of Commerce representing large and small businesses, are so adamantly opposed to this amendment.

Mr. SCOTT. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this is an important provision to protect consumers. The bill provides problems for consumers by making them chase around every possible person that may have had anything to do with it, rather than the person they bought the product from.

It has a loser-pays provision where, if they do not accept an offer that is given and in court gets just less than that, then they owe the other side's attorneys fees. So they have to sometimes bet their house on whether or not they can get compensation. The limit on punitive damages in the bill makes it more difficult to prove the punitive damages.

It is interesting that my colleague points out the case in Alabama where the punitive damage judgment was hundreds of millions of dollars. I would only point out that that case is still going on. It is subject to appeal.

But it is also interesting to note the allegations in that particular case, where the allegation was that the company was just systematically overcharging consumers, just ripping them off. That is exactly the kind of company that is going to benefit with this bill if this amendment is not adopted. Those who rip-off consumers, those who act with a reckless and wanton disregard for the safety of others, those are the ones who will benefit by this bill if the amendment is not adopted.

Mr. Chairman, I would hope that we would protect consumers and adopt this amendment.

Mr. GOODLATTE. Mr. Chairman I yield myself the balance of my time.

Mr. Chairman, it is the consumers who benefit from a cap on punitive damages. A $580 million punitive damage award against the Whirlpool Corporation that I cited earlier reported in the May 11, that is yesterday's, edition to the Wall Street Journal and Washington Times gets passed on to every single consumer who buys products manufactured by the Whirlpool Corporation, washers and dryers and dishwashers and refrigerators and freezers and everything else that they manufacture.

All of them have to pay more when one unelected jury in the State of Alabama gives a $580 million punitive damage award. The company has to spread that cost over every single item that they sell to consumers.

Punitive damages represent a large and growing percentage of total damages awarded in all financial injury verdicts, rising from 44 percent to 59 percent of total awards between 1985 and 1989 and 1990 to 1994. In Alabama, the figure was 82 percent.

In the jurisdictions studied for 1985 to 1994, the total amount awarded for punitive damages nearly doubled, from $1.2 billion in 1985 to 1989 to $2.3 billion in 1990 to 1994. This does not relieve any plaintiff of any injury. It is simply a windfall.

We do need to deter future action of bad actors. Y2K is a particularly good area to have caps on punitive damages because of the fact that there is not going to be, in most instances, any future action related to Y2K cases because, once we get passed next year, there are not going to be any more new actions or new suits related to this.

I urge my colleagues to oppose this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. SCOTT).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 166, further proceedings on the amendment offered by the gentleman from Virginia (Mr. SCOTT) will be postponed.

The point of no quorum is considered withdrawn.

AMENDMENT NO. 5 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. NADLER:

Strike title IV and redesignate title V, sections therein, and references thereto, accordingly.

The CHAIRMAN. Pursuant to House Resolution 166, the gentleman from New York (Mr. NADLER) and the gentleman from Virginia (Mr. GOODLATTE) each will control 10 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would strike the sections of the bill which place severe limits and, I would say, gut any possibility of class-action suits in Y2K situations.

The bill's unnecessary class action provisions will do nothing to address the Y2K problem and serve only to restrict the rights of millions of consumers who may be negatively affected by the negligence of some. In addition, they will burden the Federal courts, and it will impede justice for many others as well.

Some of the provisions that would do this, one provision would require plaintiffs to prove in a class-action suit that there was a material defect as to a majority of the members of the class. This provision places a huge burden on the plaintiffs and on the court and is totally unnecessary.

Plaintiffs would now be required to interview and document the same type of damage on thousands of people with identical injuries. For example, in a case involving 17,000 doctors, a recent case, about 8,500 doctors would have had to document that they were all harmed in the same way because they all had the same defective computer program. This is a total waste of money.

The only reason for this provision is to make it more difficult for people to file class-action lawsuits. After all, why are there class-action lawsuits in the first place? Class actions are used by large groups of people who have suffered the same injury from a single defendant or group of defendants. When more than a million people were cheated out of $150 each because of fraud by Sears Roebuck a couple of years ago, it did not make sense for all of them to sue individually for $150. It could not have been done. Without a class-action proceeding, Sears Roebuck would have profited from its fraud to the tune of $168 million.

By joining together, the victims, individuals or small businesses who are victimized by intentional or by negligent torts, can seek their damages collectively and hold the tort-feasors responsible. Class actions let the little guys sue the big guys, which, as I understand, is why some people want to eliminate them.

They also help the courts. Why should the courts be forced to hear the same story over and over again?

Second, the bill would limit access to the courts by requiring notice of the action to be sent by mail, return receipt requested. That would cost, according to the Post Office, $2.65 plus postage for each individual. So that means, for those 17,000 doctors cases, it would have cost $51,000 just to send a one-page notice. What a waste of money.

What if there were more than 17,000 plaintiffs? What if, as in the Sears case, there were over a million? It would have cost over $3 million just for notice to institute the lawsuit.

This is simply ridiculous and is another attempt to prevent class-action lawsuits, which is the only way for the powerless victims to hold the powerful accountable. It sends a message in the context of this bill that large companies do not have to make any real efforts to prepare for Y2K problems. After all, most victims of their negligence in failing to prepare will not be able to sue them because it would cost hundreds of thousands or millions of dollars just for the notice provision.

The bill also removes almost all Y2K class-action lawsuits to Federal court. It overrides State law. It would require that any amount in controversy over a million dollars, which in any class-action almost all are for over a million dollars, it would go to Federal court.

It would provide that if there is one diversity of citizenship, if a million people in New York claimed damages and one in New Jersey, that goes to Federal court.

This overburdens the Federal courts. Judge Stapleton of the Court of Appeals for the Third Circuit testified on behalf of the Judicial Conference that this class-action provision in this bill would significantly disrupt the administration of justice in the Federal courts, which are overburdened.

Of course, we hear from the other side of the aisle all the time in favor of not infringing on the rights of the States. That is what we were told in the bankruptcy debate last week. We could not have a ceiling on the homestead exemptions because a couple States would not like that.

This bill infringes on the traditional authority of States to manage their own judicial business. By shifting all these State-created causes of action to Federal court, the bills confront the Federal courts with the time-consuming responsibility of engaging in a lot of choice-of-law decisions.

Finally, I will mention that the State courts provide most of the Nation's judicial capacity, so we should not limit access to this capacity in the face of the burden that Y2K litigation may impose.

Contrary to the stated goals of this litigation, the class-action provisions, by essentially eliminating class actions and federalizing those that would remain, would seriously impair our ability to efficiently resolve Y2K disputes and again says to major companies, ''Do not bother fixing the Y2K problem. The cost will be passed on to your customers and consumers because they will not be able to sue you because of the normal cost of litigation. We will not let them consolidate those costs in a class action, which is the only way small customers, small consumers ever can sue big tort-feasors.'' This provision should be called the ''Tort-feasors Rights Act of 1999.''

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong opposition to this amendment. The class-action reform contained in this bill is entirely reasonable. It is strongly supported by a large number of bipartisan folks. In fact, legislation very similar to what is provided here will be introduced by myself, the gentleman from Virginia (Mr. BOUCHER) and others next week which will deal with class-action reform in a broader sense.

But the principle is very simple. Nobody should be able to go forum shopping in one county, in one State and bring a nationwide class-action suit before a judge that is predisposed to certify such class-action suits when the case considered on a larger scale would not be brought.

□ 1345

There are judges in this country who have certified large numbers of class action lawsuits and, in fact, far more than the entire Federal Judiciary combined. And so this is simply a reasonable reform.

The gentleman from New York makes reference to not wanting to hear cases over and over and over again. That is exactly what this legislation will do, because if it is truly a diverse class action with plaintiffs from across the country, the case will be removed to Federal Court and only heard once, whereas a class action could be brought in a number of States and retried a number of times under different legal theories. This is a sensible way to address that.

The provisions of this section of the bill are also very reasonable and, in fact, some of them are included in both the substitute offered by the gentleman from Michigan (Mr. CONYERS) and are supported by the White House, including the minimum injury requirement.

This provision simply states that where it is claimed in a class action that a product or service is defective, one can file a class action only where the court finds that the alleged defect was material as to a majority of the class members. The provision simply says that an individual should not be able to file a class action unless the majority of people on whose behalf the action is brought have allegedly suffered some sort of real injury.

The notice provision is also entirely reasonable. It is impossible to see how this provision can be controversial. It simply requires that class members in a Y2K class action must be notified directly that they are parties to a lawsuit, that they have claims that are going to be resolved, that they have certain rights in the lawsuit, and that they may opt out of the lawsuit if they wish. Such notice is critical to a fair litigation system.

Some class members may want to opt out of a class action and insert their claims individually. In other instances, class members may object to having litigation brought on their behalf without their permission and for that reason may likewise wish to opt out.

What justifying could there be for not providing such information to the class members who are being represented in the case, the people on whose behalf the litigation supposedly has been brought?

The dismissal prior to certification provision merely provides that a court may rule on a motion to dismiss or a summary judgment motion before deciding whether a case may be prosecuted on behalf of a class. This provision should also not be controversial. Under present law both Federal and State courts engage in this practice every day.

The Federal jurisdiction provisions, to me, are most important. H.R. 775 would not make any changes where individual Year 2000 actions may be filed. If the cases are meeting Federal jurisdictional requirements, they may be filed in Federal District Court, otherwise they may be filed in an appropriate State court. However, H.R. 775 does provide that larger Year 2000 class actions, that is cases in which the total of all claims asserted exceed $1 million, may be brought in Federal Court or may be removed to such court by the defendant.

There are two exceptions: Local class actions. The bill does not create Federal jurisdiction for Year 2000 class actions in which a substantial majority of the members of the proposed class are citizens of a single State of which the primary defendants are also citizens and to the claims asserted will be by the laws of that State.

Also, State action cases. The bill creates no Federal jurisdiction over Year 2000 class actions in which the defendants are States or State entities against which a Federal District Court may be foreclosed from ordering relief.

Defendants wishing to remove Year 2000 cases to Federal Court under these provisions would simply employ the existing removal statutes as they apply to Federal question matters. The bill does not alter existing removal procedures.

The creation of Federal jurisdiction over certain larger Year 2000 class actions is appropriate for several reasons:

First, H.R. 775 is prompted in part by a concern that a proliferation of Year 2000 actions by opportunistic parties may further limit access to the courts by straining the resources of the legal system and depriving deserving parties of their legitimate right to relief.

To address that concern, the bill would establish certain subsequent prerequisites in bringing Year 2000 class actions, particularly the material defect requirement I mentioned earlier. In the interest of consistent, rigorous enforcement of these important provisions, it is critical most such matters be heard by our Federal courts.

Second, overlapping class actions asserting similar claims on behalf of the same persons undoubtedly will be filed in numerous different State courts nationwide. In the interest of consistent, efficient adjudication of such class actions they should be consolidated before a single court.

That consolidation is not possible if those claims remain in State courts. Only our Federal courts can achieve sump consolidation through their multi-district litigation authority. Thus, allowing these cases access to Federal courts is critical to the fair, orderly adjudication of such claims.

Third, as drafted, the bill makes proper use of Federal question jurisdiction. Even though State law typically will apply to many aspects of Year 2000 class action claims, the bill will be supplying important new Federal substantive law to such cases, as mentioned above. Thus, there is a basis for Federal question jurisdiction.

There is precedent for the use of Federal question jurisdiction in such circumstances, such as the Magnuson-Moss Warranty Act that authorizes certain claims be asserted in Federal Court, even though many aspects thereof are governed by State laws.

Fourth, the bill includes appropriate limits on the available Federal question jurisdiction over Year 2000 class actions to avoid having small or local disputes heard in Federal Court. For example, for many years, until 1980, the general Federal question statute contained a jurisdictional amount requirement.

Finally, by enacting H.R. 775, Congress will be declaring Year 2000 litigation to warrant priority attention. It is thus appropriate for our Federal courts to be empowered to hear the largest Year 2000 cases that will touch the most Americans; the inevitable class actions asserting Year 2000 claims.

Mr. Chairman, for these reasons I oppose this amendment and strongly urge my colleagues to vote against it.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, how much time do I have and how much time does the gentleman from Virginia have?

The CHAIRMAN. The gentleman from New York (Mr. NADLER) has 4½ minutes remaining, and the gentleman from Virginia (Mr. GOODLATTE) has 2½ minutes remaining.

Mr. NADLER. Mr. Chairman, I yield 2¼ minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, I rise in support of this amendment offered by the gentleman from New York (Mr. NADLER) which strikes the class action section of the bill.

Class action procedures offer valuable mechanisms for the little guy to get into court where a defendant may have gained a substantial benefit through injuries to a large number of persons. I think H.R. 775 creates an undue burden on this important pro-consumer procedure.

We have had a discussion of some of the issues, but I think it is worth pointing out that some of the procedural issues are enormously burdensome in terms of notification. For example, one of the persons who argued against this in committee said if a party has to, in writing, deliver the notice of an offer to every member of the class every time an offer is made, that party could end up with a situation where opposing counsel may offer $10, and then that offer has to be mailed to everyone; and then the next hour an offer of $11 is made, and that offer has to be mailed to everyone in the class. It is really quite unworkable, and I do not see that it is really on point to the grit of the Y2K issue.

The elimination of the complete diversity requirement for Y2K is also a problem. The Judicial Conference has told us that in their judgment this will swamp the Federal courts and prove to be impossible. That is a concern we ought to listen to, because access to courts is important to everyone, but it is also enormously important for businesses to have access to courts. If our high-tech industries cannot get into court to litigate infringement cases because the courts are crippled by taking over all class action lawsuits in America on Y2K, that will be a problem for all of us.

Finally, and I do not want to be too nit-picky about it, but I do think it is worth pointing out that there are some provisions in the section that I think none of us know what they mean; for example, on page 29, line 20, ''the substantial majority of the members of the proposed plaintiff class.'' What does that mean? And ''governed primarily by the laws of that state.''

The laws of conflict of laws are very particular, and I think that should this pass this will prove to be a complete mystery to courts who try to interpret it.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

In response to the contention that we are going to flood the Federal courts with class action lawsuits, that assertion is disproved by the U.S. Judicial Conference's own statistics.

According to those data, the number of diversity jurisdiction cases being filed in Federal Court is going down dramatically. During the 12-month period ending March 31, 1998, diversity of citizenship filings fell 6 percent to 54,547 cases, accounting for less than 20 percent of the civil cases filed in Federal Court during that period. For the 12-month period ending December 31, 1998, the downward trend is even more dramatic.

The Judicial Conference's position fails to take account of the impact of class action on our entire national judicial system, particularly the fact that many State courts face even greater burdens and are less equipped to deal with complex cases like class actions. Many State courts have crushing caseloads. And as a group, State courts have had a much more rapid growth in civil case filings than have Federal courts. Civil filings in State trial courts of general jurisdiction have increased 28 percent since 1984 versus only a 4 percent increase in the Federal courts.

For that reason, and the reasons that I outlined earlier, I urge my colleagues to object to the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, how much time do we each have, please?

The CHAIRMAN. The gentleman from New York (Mr. NADLER) has 2½ minutes remaining, and the gentleman from Virginia (Mr. GOODLATTE) has 1 minute remaining.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Virginia gave the game away a few minutes ago when he said that he is going to be introducing a bill, along with others, on embracing most of these same provisions on class action suits in general. And that is the proper forum to discuss these issues.

Why here, only with respect to Y2K? Well, why not get away with it where one can? Why not make a different rule for Y2K? There is no justification for that.

I disagree with the gentleman's positions on class actions, but the proper forum to debate those is in general for class actions. If it is proper to require these specific notice provisions in a class action suit in Y2K, it is proper to require them in all class actions and we ought to debate that separately.

But let us talk for a moment about the effect on Y2K. These provisions will eliminate 95 percent of class action suits. How many people will be able to afford the tens of thousands or the hundreds of thousands or the millions of dollars up front just for the notice provisions? That is why we have notice provisions in the law now, but not overly burdensome notice provisions.

What the gentleman's bill would do, without this amendment, would be to say an individual cannot start a class action suit unless they can come up with all this money up front. And the intention is, little guys should not sue big guys. Big guys should do whatever they want and not be subject to justice in our courts. And that is what this bill would do.

The Judicial Conference said the Federalization provisions would clog the courts. The gentleman says diversity cases are going down. Yes, they went down by 6 percent, but this would open up almost all cases to Federal diversity jurisdiction now, and that would clog the courts. One person in the class lives in a different State, we have diversity jurisdiction under this bill, which means essentially every class action suit will be in Federal Court. That will clog the Federal courts.

I would remind everybody that most judicial personnel, better than 95 percent of judicial personnel, are in State courts, not Federal courts.

□ 1400

This would make the victim pay. It is another whole discussion whether we should turn our American justice system upside down and make the victim pay if he loses the lawsuit, pay all the court costs. This is a discussion for a general bill. It is not a discussion for the Y2K bill.

In summary, these provisions do not belong in this bill and they would say, essentially, to big businesses, do not bother getting themselves into shape for Y2K because nobody except another big business is going to be able to sue them because we are eliminating class actions here. And if that is the intent, then we ought to be up front about it and say we do not believe that the courts are for little people to sue big

people, because that is what this bill does.

Mr. GOODLATTE. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, we are not trying to eliminate class-action lawsuits. We are simply saying that, if they are diverse, they ought to be heard in Federal court and not recognize that the current forum shopping that takes place where they find a judge in one small county in one State who likes to certify nationwide class-action suits, those class-action suits that have merit will be treated fairly by the entire 600-judge Federal judiciary and those that are appropriately certifiable will be certified and go forward.

Y2K is a particularly good issue in which to reform class action because it is limited and because it will only proceed for a limited period of time.

So in order to avoid a mass of class-action suits in a whole host of States, let us be practical, let us make sure that those that are truly diverse are removed to Federal court and heard in a more orderly, efficient, and economical fashion.

I urge my colleagues to oppose this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 166, further proceedings on the amendment offered by the gentleman from New York (Mr. NADLER) will be postponed.

The point of no quorum is considered withdrawn.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 166, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 4 offered by the gentleman from Virginia (Mr. SCOTT), and amendment No. 5 offered by the gentleman from New York (Mr. NADLER).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 4 OFFERED BY MR. SCOTT

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Virginia (Mr. SCOTT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 192, noes 235, not voting 6, as follows:

[Roll No. 124]

AYES—192

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Coble
Conyers
Costello
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Engel
English
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frost
Ganske
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lazio
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moakley
Mollohan
Moore
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—235

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
DeMint
Dickey
Dooley
Doolittle
Dreier
Edwards
Ehlers
Ehrlich
Emerson
Eshoo
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Minge
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Turner
Upton
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Barton
Brown (CA)
Cox
Dunn
Napolitano
Slaughter

□ 1422

Messrs. THOMAS, TANCREDO, GILLMOR, Mrs. JOHNSON of Connecticut and Mr. MINGE changed their vote from ''aye'' to ''no.''

Messrs. ROTHMAN, DAVIS of Illinois, ABERCROMBIE, ORTIZ and FATTAH changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Ms. DUNN. Mr. Chairman, on rollcall No. 124, I was inadvertently detained. Had I been present, I would have voted "no."

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Pursuant to House Resolution 166, the Chair announces that he will reduce to 5 minutes the period of time within which a vote by electronic device will be taken on the next amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 5 OFFERED BY MR. NADLER

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from New York (Mr. NADLER) on which further proceedings were

postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 180, noes 244, not voting 9, as follows:

[Roll No. 125]

AYES—180

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Capuano
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Duncan
Edwards
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Ganske
Gejdenson
Gephardt
Gonzalez
Green (TX)
Gutierrez
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hoyer
Hulshof
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Phelps
Price (NC)
Pryce (OH)
Rahall
Rangel
Reyes
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Smith (WA)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Sweeney
Thompson (CA)
Thompson (MS)
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—244

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Castle
Chabot
Chambliss
Chenoweth
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cramer
Crane
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Dickey
Dooley
Doolittle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Eshoo
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rivers
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Thurman
Tiahrt
Toomey
Upton
Walden
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Barton
Brown (CA)
Cox
Doyle
Herger
Napolitano
Slaughter
Walsh
Weldon (PA)

□ 1430

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 6 printed in part 2 of House Report 106–134.

AMENDMENT NO. 6 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

The text of Amendment No. 6 in the nature of a substitute offered by Mr. CONYERS:

Strike all after the enacting clause and insert the following:

SECTION. 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Y2K Readiness and Remediation Act''.

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

Sec. 1. Short title and table of contents.
Sec. 2. Findings, purposes, and scope.
Sec. 3. Definitions.
Sec. 4. Preemption of State law.

TITLE I—COOLING OFF PERIOD

Sec. 101. Notice and opportunity to cure.
Sec. 102. Out of court settlement.

TITLE II—SPECIFIC PLEADINGS AND DUTY TO MITIGATE

Sec. 201. Pleading requirements.
Sec. 202. Duty to mitigate damages.

TITLE III—YEAR 2000 CIVIL ACTIONS INVOLVING CONTRACTS

Sec. 301. Contract preservation.
Sec. 302. Impossibility or commercial impracticability.

TITLE IV—YEAR 2000 CIVIL ACTIONS INVOLVING TORT AND OTHER NON-CONTRACTUAL CLAIMS

Sec. 401. Fair share liability.
Sec. 402. Economic losses.

TITLE V—EFFECTIVE DATE

Sec. 510. Effective date.

SEC. 2. FINDINGS, PURPOSES, AND SCOPE.

(a) FINDINGS.—Congress finds the following:

(1) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(2) If not corrected, the year 2000 problem described above and the resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(3) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date change problems, so as to minimize possible disruptions associated with computer failures.

(4) The year 2000 computer date change problems may adversely affect businesses and other users of technology products in a unique fashion, prompting unprecedented litigation and the delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation could exacerbate the difficulties associated with the Year 2000 date change and compromise efforts to resolve these difficulties.

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

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

(2) to encourage the resolution of year 2000 computer date-change disputes involving economic damages without recourse to unnecessary, time consuming, and wasteful litigation; and

(3) to lessen burdens on interstate commerce by discouraging insubstantial lawsuits, while also preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

(c) SCOPE.—Except as provided in section 201(c) or other provisions of this Act, this Act applies only to claims for commercial loss.

SEC. 3. DEFINITIONS.

In this Act:

(1) PERSON.—The term ''person'' means any natural person and any entity, organization, or enterprise, including any corporation, company (including any joint stock company), association, partnership, trust, or governmental entity.

(2) PLAINTIFF.—The term ''plaintiff'' means any person who asserts a year 2000 claim.

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

(4) CONTRACT.—The term ''contract'' means a contract, tariff, license, or warranty.

(5) YEAR 2000 CIVIL ACTION.—The term ''year 2000 civil action''—

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

(i) a year 2000 claim is asserted; or

(ii) any claim or defense is related to an actual or potential year 2000 failure;

(B) includes a civil action commenced in any Federal or State court by a department, agency, or instrumentality of the United States government or of a State government when acting in a commercial or contracting capacity; but

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

(6) YEAR 2000 CLAIM.—The term ''year 2000 claim'' means any claim or cause of action of any kind, whether asserted by way of claim, counterclaim, cross-claim, third-party claim, or otherwise, in which the plaintiff's alleged loss or harm resulted from an actual or potential year 2000 failure.

(7) YEAR 2000 FAILURE.—The term ''year 2000 failure'' means any failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions, however constructed, in processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving year 2000 date related data, including failures—

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

(B) to recognize or process accurately any specific date, or to account accurately for the status of the year 2000 as a leap year, including recognition and processing of the correct date on February 29, 2000.

(8) MATERIAL DEFECT.—

(A) IN GENERAL.—The term ''material defect'' means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or intended.

(B) EXCLUSIONS.—The term does not include any defect that—

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

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

(iii) has an insignificant or de minimis effect on the efficacy of the service provided.

(9) ECONOMIC LOSS.—The term ''economic loss''—

(A) means any damages other than damages arising out of personal injury or damage to tangible property; and

(B) includes damages for—

(i) lost profits or sales;

(ii) business interruption;

(iii) losses indirectly suffered as a result of the defendant's wrongful act or omission;

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

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

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

(10) PERSONAL INJURY.—The term ''personal injury'' means physical injury to a natural person, including —

(i) death as a result of a physical injury; and

(ii) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(11) 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 United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(12) ALTERNATIVE DISPUTE RESOLUTION.—The term ''alternative dispute resolution'' means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

(13) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or harm incurred by a plaintiff in the course of operating a business enterprise that provides goods or services for remuneration, if the loss or harm is to the business enterprise.

SEC. 4. PREEMPTION OF STATE LAW.

Except as otherwise provided in this Act, this Act supersedes State law to the extent that it establishes a rule of law applicable to a year 2000 claim that is inconsistent with State law.

TITLE I—COOLING OFF PERIOD

SEC. 101. NOTICE AND OPPORTUNITY TO CURE.

(a) NOTICE OF COOLING OFF 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 required to provide to each prospective defendant a verifiable written notice that identifies and describes with particularity, to the extent possible before discovery—

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

(B) the injury allegedly suffered or reasonably risked by the prospective plaintiff; and

(C) the relief or action sought by the prospective plaintiff.

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

(b) RESPONSE TO NOTICE.—Not later than 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall provide each prospective plaintiff a written statement that—

(1) acknowledges receipt of the notice; and

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

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

(1) the 90-day waiting period identified in subsection (a) shall terminate at the expiration of the 30-day period specified in subsection (b) with respect to that prospective defendant; and

(2) the prospective plaintiff may commence a year 2000 civil action against such prospective defendant immediately upon the termination of that waiting period.

(d) FAILURE TO PROVIDE NOTICE.—

(1) IN GENERAL.—Subject to subsections (c) and (e), a defendant may treat a complaint filed by the plaintiff as a notice required under subsection (a) by so informing the court and the plaintiff if the defendant determines that a plaintiff has commenced a year 2000 civil action—

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

(B) before the expiration of the waiting period specified in subsection (a).

(2) STAY.—If a defendant elects under paragraph (1) to treat a complaint as a notice—

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

(B) the time for filing answers and all other pleadings shall be tolled during the applicable period.

(e) EFFECT OF WAITING PERIODS.—In any case in which a contract, or a statute enacted before March 1, 1999, requires notice of nonperformance and provides for a period of delay before the initiation of suit for breach or repudiation of contract, the contractual period of delay controls and shall apply in lieu of the waiting period specified in subsections (a) and (d).

(f) SANCTION FOR FRIVOLOUS INVOCATION OF THE STAY PROVISION.—If a defendant acts under subsection (d) to stay an action, and the court subsequently finds that the assertion by the defendant that the action is a year 2000 civil action was frivolous and made for the purpose of causing unnecessary delay, the court may impose a sanction, including an order to make payments to opposing parties in accordance with Rule 11 of the Federal Rules of Civil Procedure or applicable State rules of civil procedure.

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

(h) SINGLE PERIOD.—With respect to any year 2000 claim—

(1) to which subsection (c)(2) regarding commencement of actions applies, or

(2) to which subsection (d)(2) requiring stays applies,

only one waiting period, not exceeding 90 days, shall be accorded to the parties.

(i) APPLICABILITY OF STATUTES OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed notice under subsection (a).

SEC. 102. OUT OF COURT SETTLEMENT.

(a) REQUESTS MADE DURING NOTIFICATION (COOLING OFF) PERIOD.—At any time during the 90-day notification period under section 101(a), either party may request the other party to use alternative dispute resolution. If, based upon that request, the parties enter into an agreement to use alternative dispute resolution, the parties may also agree to an extension of that 90-day period.

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

(c) PAYMENT DATE.—If a dispute that is the subject of the complaint or responsive pleading is resolved through alternative dispute

resolution as provided in subsection (a) or (b), the defendant shall pay any amount of funds that the defendant is required to pay the plaintiff under the settlement not later than 30 days after the date on which the parties settle the dispute, and all other terms shall be implemented as promptly as possible based upon the agreement of the parties, unless another period of time is agreed to by the parties or established by contract between the parties.

TITLE II—SPECIFIC PLEADINGS AND DUTY TO MITIGATE

SEC. 201. PLEADING REQUIREMENTS.

(a) NATURE AND AMOUNT OF DAMAGES.—In any year 2000 civil action in which a plaintiff seeks an award of money damages, the complaint shall state with particularity to the extent possible before discovery with regard to each year 2000 claim—

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

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

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

(1) identify with particularity the manifestations of the material defects; and

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

(c) MATERIAL DEFECTS IN CLASS ACTION MINIMUM INJURY REQUIREMENT.—In any year 2000 civil action involving a year 2000 claim that a product or service is defective, the action may be maintained as a class action in Federal or State court with respect to that claim only if—

(1) the claim satisfies all other prerequisites established by applicable Federal or State law; and

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

This subsection applies to year 2000 claims for commercial loss and to year 2000 claims for loss or harm other than commercial loss.

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

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

(2) STAY OF DISCOVERY.—Subject to the 90-day single period provisions of section 101(h), in any year 2000 civil action, all discovery and other proceedings shall be stayed during the pendency of any motion pursuant to this subsection to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

(3) PRESERVATION OF EVIDENCE.—

(A) IN GENERAL.—

(i) TREATMENT OF EVIDENCE.— During the pendency of any stay of discovery entered under paragraph (2), unless otherwise ordered by the court, any party to the action shall treat the items described in clause (ii) as if they were a subject of a continuing request for production of documents from an opposing party under applicable Federal or State rules of civil procedure.

(ii) ITEMS.—The items described in this clause are all documents, data compilations (including electronically stored or recorded data), and tangible objects that—

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

(II) are relevant to the allegations.

(B) SANCTION FOR WILLFUL VIOLATION.—A party aggrieved by the willful failure of an opposing party to comply with subparagraph (A) may apply to the court for an order awarding appropriate sanctions.

SEC. 202. DUTY TO MITIGATE DAMAGES.

Damages awarded for any year 2000 claim shall exclude any amount that the plaintiff reasonably should have avoided in light of any disclosure or information provided to the plaintiff by defendant.

TITLE III—YEAR 2000 CIVIL ACTIONS INVOLVING CONTRACTS

SEC. 301. CONTRACT PRESERVATION.

(a) IN GENERAL.—Subject to subsection (b), in resolving any year 2000 claim each written contractual term, including any limitation or exclusion of liability or disclaimer of warranty, shall be strictly enforced, unless the enforcement of that term would contravene applicable State law as of January 1, 1999.

(b) INTERPRETATION OF CONTRACT.—In any case in which a contract under subsection (a) is silent with respect to a particular issue, the interpretation of the contract with respect to that issue shall be determined by applicable law in effect at the time that the contract was entered into.

SEC. 302. IMPOSSIBILITY OR COMMERCIAL IMPRACTICABILITY.

(a) IN GENERAL.—In any year 2000 civil action in which a year 2000 claim is advanced alleging a breach of contract or related claim, in resolving that claim applicability of the doctrines of impossibility and commercial impracticability shall be determined by applicable law in existence on January 1, 1999.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed as limiting or impairing a party's right to assert defenses based upon the doctrines referred to in subsection (a).

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

SEC. 401. FAIR SHARE LIABILITY.

(a) GENERAL RULE.—Subject to subsection (d), in any year 2000 civil action, the liability of each tort feasor or noncontractual defendant shall be joint and several, subject to the court's equitable discretion to determine, following upon a finding of proportional responsibility, that the liability of a tort feasor or noncontractual defendant (as the case may be) of minimal responsibility shall be several only and not joint.

(b) AMOUNT OF LIABILITY.—Each defendant that is severally liable in a year 2000 civil action shall be liable only for the amount of loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with subsection (c)) for such harm.

(c) DETERMINATION OF RESPONSIBILITY.—

(1) IN GENERAL.—In any year 2000 civil action, the court shall instruct the jury to answer special interrogatories, or if there is no jury, make findings, with respect to each defendant and plaintiff, and each of the other persons claimed by any of the parties to have caused or contributed to the loss incurred by the plaintiff, including persons who have entered into settlements with the plaintiff or plaintiffs, concerning the percentage of responsibility of that person, measured as a percentage of the total fault of all persons who caused or contributed to the total loss incurred by the plaintiff.

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

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

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

(3) FACTORS FOR CONSIDERATION.—In determining the percentage of responsibility under this paragraph, the trier of fact shall consider—

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

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff or plaintiffs.

(d) SPECIAL RULES FOR JOINT LIABILITY.—

(1) IN GENERAL.—Notwithstanding subsection (a), in any case the liability of a defendant to which subsection (a) applies in a year 2000 civil action is joint and several if the trier of fact specifically determines that the defendant —

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) KNOWING COMMISSION OF FRAUD DESCRIBED.—For purposes of paragraph 1(B), a defendant knowingly committed fraud if the defendant—

(A) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(B) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(C) knew that the plaintiff was reasonably likely to rely on the false statement.

(3) RECKLESSNESS.—For purposes of paragraph (1), reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(e) CONTRIBUTION.—A defendant who is a jointly and severally liable for damages in a year 2000 civil action may recover contribution for such damages from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for such contribution is made.

(f) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution under subsection (e) in connection with a year 2000 civil action may not be brought later than six months after the entry of a final, nonappealable judgment in the year 2000 civil action.

SEC. 402. ECONOMIC LOSSES.

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

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

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

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

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

(b) TREATMENT OF ECONOMIC LOSSES.—Economic losses shall be recoverable in a year 2000 civil action only if applicable Federal law, or applicable State law embodied in

statute or controlling judicial precedent as of January 1, 1999, permits the recovery of such losses in the action.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

The CHAIRMAN. Pursuant to House Resolution 166, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Tennessee (Mr. BRYANT) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from California (Ms. LOFGREN) to speak on behalf of this very important substitute.

Ms. LOFGREN. Mr. Chairman, I represent San Jose, California, that calls itself the capital of Silicon Valley, and, as my colleagues can imagine, addressing the issues posed by Y2K liability is something of interest to me. At home among high tech CEO's there is a division of opinion on whether Y2K will be a huge deal or a little tiny deal. Some people, some CEO's and high tech-ers think that it will be a large problem. Others think it has been much overrated.

For myself, I think the possibility of extensive litigation is sufficient for this body to take an act. In a way I think about it as I think about the Titanic. The chances of the Titanic running into the iceberg were very small, but when it happened it was catastrophic, and so I do think it is appropriate for us to put in place some life rafts and some rowboats so that the economy of the United States is not impaired by litigation that is frivolous or unnecessary.

On the other hand, I am anxious that we move expeditiously and that we come to common ground on this matter.

How do we legislate here in Congress? Too often, people see us arguing and disagreeing, but in truth we know that we come to a conclusion by reaching out to each other and finding out what we can agree on; Democrats and Republicans, what can we agree on; House and Senate, what can we agree on; and Congress and the White House, what can we agree on; because it takes all of those parties to make a law. And because the Y2K issue is coming at us, it is important that we go through this extended process of finding common ground more quickly than is ordinarily the case.

If I can just briefly relate a conversation I had with Scott Cook, the founder of Intuit, in San Jose just on Friday. As my colleagues know, he thanked me for my efforts on behalf of Y2K and also pointed out we cannot wait until the year 2003 to get a bill; we need it this spring.

That is why we have offered up this substitute. I believe that it offers those things that we can agree upon, Democrats and Republicans, House and Senate, White House and Congress, and that it offers up elements that will provide the essential life raft for high tech in our economy.

Specifically Title I allows for a cooling-off period and incentives to settle for alternative dispute mechanisms just as does the underlying bill. It also requires for a specific and particular pleading, which is an important issue, and requires the duty to mitigate damages. It also includes, requires, that material defects must be the basis for lawsuits, not immaterial material defects, but material defects, and finally does provide for an alteration of joint and several liability so that those defendants who have minimal liability cannot be held totally responsible for the cost unless their conduct constituted fraud.

I must say that although this bill, this amendment, may not be perfect, it will get the job done, and it is something that we can agree on.

The Justice Department in defining the underlying Davis bill said this: by far the most sweeping litigation reform measure ever considered. The bill makes, and I quote again, extraordinarily dramatic changes in both Federal procedure, in substantive law and in State procedural and substantive laws. The class-action removal is just one situation that we have already discussed in the last amendment. We cannot come to an agreement on that, and as the gentleman from Virginia (Mr. GOODLATTE) said in closing under the hour of general debate, much of what is in the underlying Davis bill was in the Contract with America. Reasonable people can and do disagree on many of those provisions, and that argument can be had another day.

What I am saying is we cannot and we should not tie up this essential Y2K matter over those things that we cannot agree on, so I highly recommend this.

Mr. CONYERS. Mr. Chairman, I reserve the balance of my time.

Mr. BRYANT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Conyers amendment would neither encourage Y2K remediation nor discourage frivolous litigation. This substitute recognizes the seriousness of the Y2K litigation problem and, as well, the necessity of a legislative response. But the amendment waters down key provisions of H.R. 775 in a way that would make the bill markedly less effective in screening out insubstantial litigation and encouraging remediation. This amendment should be rejected.

Among its most serious defects are, one, the amendment would allow vague and unsupported allegations of fraud to survive a motion to dismiss. Two, the amendment does not impose a meaningful duty to mitigate damages and, therefore, does not encourage remediation. Three, the amendment does not impose meaningful limits on joint and several liability and thus does nothing to prevent strike suits against defendants with deep pockets. Four, the substitute does nothing to advance reasonable efforts to remediate Y2K problems. Five, the substitute does not limit punitive damages and, therefore, does nothing to discourage abusive suits by lawyers who seek to win litigation jackpots. And finally, six, the substitute would keep national class actions involving out-of-state defendants in State courts.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 5 minutes to the gentleman from Virginia (Mr. BOUCHER), who has worked very diligently on this alternative substitute.

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding me this time.

It is my pleasure to rise in support of the amendment in the nature of a substitute offered by the gentleman from Michigan and the gentlewoman from California with whom I am pleased to be co-authoring this measure. I also urge opposition to the overly broad provisions of H.R. 775 as reported from the House Committee on the Judiciary.

Mr. Chairman, our substitute addresses in a straightforward and in a targeted fashion the genuine concerns that arise from the Y2K transition. The substitute provides for a cooling-off period. Before a suit is filed, plaintiffs would be required to give notice to potential defendants of a claim. Defendants would then have 30 days to respond to that notice and to provide a plan for how they would intend to repair the problem. They would then have an additional 60 days within which to affect those repairs.

The substitute encourages alternative dispute resolution so as to avoid expensive litigation. The 90-day cooling-off period can be extended while any alternative dispute resolution process is in progress.

The substitute requires that, if suit is filed, the plaintiff must state with particularity the problem he is having and the reason that the defendant or the defendants are responsible for that harm. This pleading requirement is designed to overcome the notice pleading rules that are currently in effect in some State courts.

The substitute prohibits frivolous class-action suits. To sustain a Y2K class-action suit, the plaintiff would have to meet all of the normal class-action certification rules and, in addition, demonstrate that there is a material defect in the product or the service with respect to every member of the class. Every member of the class would have to show that he is affected by a material defect. This minimum injury requirement would go a very long way indeed toward avoiding and precluding frivolous or insubstantial class-action suits.

The substitute imposes a clear duty on plaintiffs to mitigate damages. It codifies the economic loss doctrine now

applied in many States for cases that involve a combination of contract and tort causes of action. Under that doctrine, damages are limited to those allowable under the contract claim unless there is also a personal injury or property damage shown. Economic losses, such as lost profits or business interruption, will not be permitted unless explicitly provided for in the contract itself. The tort cause of action will simply not extend to these elements of loss in the normal case.

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Very importantly, the substitute gives the court the ability to protect defendants who have a small proportionate share of the overall liability. The substitute says that the court can apply equitable principles and make sure that defendants who have a very small part of the responsibility for causing harm will have only a very small liability, and their liability will be directly proportional to the harm that they cause. We do have in this substitute an important proportional liability provision.

The substitute truly meets the needs of the companies that will have Y2K liabilities. It is carefully targeted to meet the problem that has been presented. Our substitute does not contain the broader litigation restrictions that are a part of H.R. 775.

Unlike H.R. 775, our substitute does not place a cap on damage awards. Unlike H.R. 775, our substitute does not introduce into American law a loser pays principle. Unlike H.R. 775, our substitute does not create a more rigorous standard of proof for plaintiffs to receive damages, and unlike H.R. 775, our substitute does not reduce the liability of corporate officials.

These overly broad provisions of H.R. 775 are not necessary to address the genuine concerns that are presented in the Y2K transition. A measure that contains these overly broad provisions will not be signed into law. Our substitute would be signed into law if passed.

Given the severely limited time that Congress has to put a Y2K transition measure into place before the start of the year, given the fact that H.R. 775 cannot become law, given that our substitute meets the real needs of the Y2K concern that has been presented and can in fact become law, I strongly urge the passage of our substitute and the defeat of the underlying bill unless it is amended with this substitute.

Mr. BRYANT. Mr. Chairman, I yield myself 30 seconds to respond briefly to the Conyers amendment containing joint and several liability relief.

Mr. Chairman, I might point out to my colleagues that this relief only applies in circumstances where the judge does not change it. The judge has the opportunity under this substitute amendment to come in and do away with the joint and several liability or not do away with the joint and several liability, which actually causes more confusion than the existing law. So, again, I would urge my colleagues to vote against this amendment.

Mr. Chairman, I yield 4 minutes to my friend, the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, when I hear them saying let us come to common ground, it means give us our way. There is nothing common about it.

I had hoped that by the time we had passed this in the Senate we could all sit down and work with the administration, who until 2 days ago was saying publicly there was no problem. John Koskinen, the administration's guru on Y2K, said we do not need any legislation, and just in the last 24 hours they have come forward and admitted, yes, there is a problem and they are trying to find a political fig leaf to cover it. This substitute, the Conyers amendment, does not do the job.

Joint and several liability is an important concept. Companies like Intel, NetScape, Oracle, companies in the Silicon Valley, this legislation, I might add, is supported by the semiconductor industry, the Software Information Industry Association, Business Software Alliance, the Technology Network, TechNet, the Semiconductor Equipment and Materials Information, Information Technology Association of America. They want real legislation, not a fig leaf that does not do the job, that is feel good.

What has happened in this case is the larger companies, the Intels, the Oracles, if they touch the problem, if they make it better than it is now, they can still be held liable for the full amount in a class action suit with joint and several liability, because they are held as a defendant.

Proportional liability, I think, is a much better range. If someone touches a problem and makes it better, they should not be held liable for the full amount just because they happen to be the deep pockets, just because they happen to have the cash on hand.

To take the money from these companies that they should be investing in new products so that they compete on a global marketplace, and instead put it into litigation, into settlement, into attorneys fees, really undermines where we have gone as a country in this new economy and where we are in the global marketplace.

This guts the bill altogether, this amendment.

They talk about this being a part of the Contract with America. Actually, this is a laser shot that goes after a problem that exists once every 1,000 years. The Y2K problem is unique because of the interconnectibility of computer systems, and the fact that someone can have their whole system, they can flush it, they can test it, it can be 100 percent clean and then some other group gets into it and talks to it that is not Y2K compliant, that they never could have conceived of could have used it, comes in and messes it up, and yet the group that is actually innocent can be held liable for the total amount. That is what this amendment is, it holds companies who are trying to improve it.

In addition to that, this makes companies reluctant to fix the problem because if they fix the problem, if they come in and help a computer system and it is still not 100 percent functional, if they happen to be the deep pocket and they are a defendant, under joint and several liability they can be liable for the whole thing.

What that means is the problem is not getting fixed or if they are getting fixed the larger companies are going to the smaller companies and having them write off indemnities and the like that just do not make any sense in the ordinary marketplace.

Make no mistake about what this amendment does. It guts the bill and it is a political fig leaf.

They talk too about the amendment does not impose a meaningful duty to mitigate damages. This amendment does not. This amendment provides that a plaintiff cannot obtain damages that it could have reasonably avoided in light of information that it received from the defendant. Unlike the bill, the substitute does not create a mitigation requirement if the plaintiff becomes or should have become aware of the information from other sources.

That is a loophole one can drive a mack truck through. It does nothing in terms of mitigation in this case, unless there is a formal notification, which so often is many months later, even though they can go publicly and acknowledge these things over television, the media and other areas.

If someone could easily avoid damage by taking a simple step which he or she should be aware, it is perverse to allow that person to avoid taking those steps and to suffer damage and then to sue a third party for compensation when they should have known, and probably knew, because they were not officially notified.

This is a bad substitute.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, the gentleman from Virginia (Mr. DAVIS) will be delighted now to find out how much the Lofgren-Conyers-Boucher substitute leaves in from the original bill. One, we encourage mediation with a 90-day cooling off period. That is in the bill.

We help eliminate frivolous lawsuits by special pleading requirements in mitigation of damages. That is in the bill.

We increase legal certainty for Y2K defendants, contracts fully enforceable, preserving defensive impossibility and commercial impracticability.

So relax. This is good material from the bill.

Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the ranking member, the gentleman from Michigan (Mr. CONYERS), for yielding me this time.

Mr. Chairman, I know some people think that debate is not often instructive but I just learned from the gentleman from Virginia (Mr. DAVIS) that the companies that will be the beneficiaries of this bill support it. That is something people might not have taken for granted.

Beyond that, however, I want to pay tribute to the great work of the gentleman from Virginia, the gentlewoman from California and the chairman, or the ranking member but chairman to be. The gentleman from Virginia and the gentlewoman from California have, in particular, distinguished themselves by thoughtful advocacy of the legitimate concerns of the high technology community. They have the vehicle that is the only one that can become law.

The administration has changed its position. It has been in part because of the work of these individuals who have said to them that they are wrong to just stonewall; let us work out a reasonable position.

Now, there is one other thing I do want to notice. I know there are Members who talk about how government always gets it wrong and the private sector always gets it right. One of our leaders of the House says government is dumb and the markets are smart. I think the markets obviously are wonderful in their work, but I do have to note that in this case it was not the government that forgot that 1999 would become 2000. That was the private sector. We all make mistakes.

The private sector is now coming to that stupid government and saying can we get a little help? I think we should. I think that is an appropriate role for government but we ought to understand what has happened here.

What this amendment does is to deal sensibly and try to find a compromise. I do not agree with everything. I am against unlimited punitive damages. I voted against the amendment of my friend, the gentleman from Virginia (Mr. SCOTT). I hope if we get to conference we will put back a cap on punitive damages, but on the whole this bill takes a sensitive and thoughtful approach.

I voted for the legislation passed over the President's veto, and I voted to override his veto limiting suits based on stocks. In this case, the companies that the gentleman from Virginia (Mr. DAVIS) enumerated need to be saved from themselves because if they insist on getting every single thing on their wish list, if they get everything that could mean they would almost never be sued under any circumstances, there will be no bill.

Yes, I think there are things about the American legal system that ought to be changed but it is fair to note that these companies we are talking about that are so afraid of this legal system grew in this legal system. If it was so terrible, if it was so obstructive, how did they get where they are? Did they all parachute in here from Mars?

The fact is that this same legal system allowed them to grow and what we now have is a sensible, thoughtful, specific compromise, worked out by people who have a great deal of understanding and knowledge of this industry and they are trying to get a bill.

We have a choice now. Some Members think a political issue would serve them better. Some Members think that legislation that gets signed into law would do a better job for the country, and I think that the substitute that is pending reflects that latter view.

I urge Members to vote for this substitute and set the basis for a sensible bill.

Mr. BRYANT. Mr. Chairman, I yield 3 minutes to the gentlewoman from Maryland (Mrs. MORELLA).

Mrs. MORELLA. Mr. Chairman, I thank the gentleman from Tennessee (Mr. BRYANT) for yielding me this time.

Mr. Chairman, I rise today in support of H.R. 775, the Y2K Readiness and Responsibility Act, and against the amendment that has been offered.

As the cochair of the House Y2K working group made up of my Subcommittee on Technology of the Committee on Science, the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform, chaired by the gentleman from California (Mr. HORN), we have been reviewing for over the past 3 years virtually every facet of the impact of the year 2000 computer problem on our public and private sectors.

In fact, one of our first joint hearings which was held in March of 1997 was held really to deal with the consequences of legal liability in litigation, upon the ability of private industries to fix the problem. At that hearing and at others, we discovered that the fear of potential legal liability created a disturbing chilling effect that froze private industry from sharing important Y2K information with each other and with the American public.

Mention was also made of the concept of the total corrective cost. It was estimated ranging from the J. P. Morgan figure of $200 billion to the Gartner Group forecast of $300 billion to $600 billion. The Giga Group estimates that the total cost could amount to several trillion dollars if there are Y2K disruptions.

So it should come as no surprise to us that certain industries have refused to acknowledge or to share year 2000 information for fear that such disclosure could ultimately leave them vulnerable to negligence and warranty suits.

That is why, remember last year we did pass the Year 2000 Information Readiness Disclosure Act as an attempt to encourage the widest possible dissemination of Y2K information by providing limited immunity from lawsuits to companies that share information about the problem in good faith.

Now that was great, but now we need to move further. That act was narrowly tailored to address just the issue of information exchange. It did not affect the greater liability questions. So I believe we must do more, and that is what H.R. 775 does.

It is a positive step, without exempting businesses from their responsibility to correct the year 2000 problem. It provides a framework for helping to resolve claims from damages that may result because of Y2K failures.

Additionally, it provides some protection for those who have made good faith efforts to address the problem. It encourages alternative dispute resolutions and settlement negotiations, instead of costly and protracted judicial litigation.

Mr. Chairman, just this past March, the Y2K working group held a first House hearing in this Congress on the liability issue. I have cited in my testimony, which will be presented for the record, statements made by, for example, Mr. Walter Andrews and Mr. Tom Donohue.

I just want to also state that the High Technology Council of Maryland has strongly supported this bill and urge that all the Members of the House vote for it.

Mr. Walter Andrews of the law firm Wiley, Rein and Fielding stated that:

> In addition to the current litigation against software developers and other developers of information technology, we can expect eventually to see suits brought against suppliers, vendors and service businesses at every level of the chain of distribution. And the legal claims that eventually may be pursued under the rubric of the Year 2000 problem span the range from contract and tort law to statutory claims.

Mr. Tom Donohue, the President and Chief Executive Officer of the United States Chamber of Commerce, testified that:

> Unlike other national emergencies that hit without any warning, we now have an opportunity to directly address the Y2K problem before it hits. The business community is willing to do its part in fixing the Y2K problem, and to compensate those who have suffered legitimate harms . . . (we must work) to ensure that our precious resources are not squandered and that our focus will be on avoiding disruptions.

HIGH TECHNOLOGY
COUNCIL OF MARYLAND,
Rockville, MD, May 12, 1999.

Members of the House of Representatives,
U.S. Congress,
Washington DC.

On behalf of the High Technology Council of Maryland, I urge you to support the legislation that provides some protections from liability for companies that have made good faith efforts to address the Y2K problem.

We think this legislation will be very beneficial to companies as it addresses in a positive way some of the legal problems that may result from the Y2K problem. Y2K is a unique situation that was only brought to light for most businesses and individuals in the last few years.

The legislation does provide a framework for helping to resolve claims from damages that may result because the Y2K issue caused products to fail. It also provides some protection for those who have made ''good faith'' efforts to address the problem and encourages dispute resolution to resolve the problems, instead of expensive litigation.

It is important to remember that this legislation does not exempt businesses from their responsibility. It gives companies guidelines for what they should be doing and recognizes the good efforts of the many businesses who are trying to solve a problem not of their making.

We urge you to support legislation that will help companies do their best to be in compliance for Y2K.

Sincerely,

DYAN BRASINGTON,
President.

□ 1500

Mr. CONYERS. Mr. Chairman, I yield 1½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT). No one has worked harder in our Committee on the Judiciary than the gentleman.

Mr. DELAHUNT. Mr. Chairman, I thank the ranking member for yielding time to me.

Mr. Chairman, I just want to set the record straight. I think that my friend and colleague, the gentleman from Virginia (Mr. DAVIS) unintentionally misstated the position of the administration in this regard, because back on April 13, which is certainly not several days ago, in her testimony before the Committee on the Judiciary Assistant Attorney General for Policy Development, Eleanor Acheson, was very, very clear. Let me read from her statement.

''We are committed to working with the committee to formulate mutually agreeable principles that would form the basis for a needed, targeted, responsible, and balanced approach to Y2K litigation reform.''

So this is not a fig leaf. In fact, it was this testimony that prompted the gentlewoman from California (Ms. LOFGREN) and the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Michigan (Mr. CONYERS) to come in with this substitute which I would submit is balanced and reasonable, and answers the problem without denying due process to small businesses and many, many Americans.

Mr. BRYANT. Mr. Chairman, I yield 15 seconds to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, I thank my friend for yielding time to me.

Mr. Chairman, I guess the administration has been at odds with itself, because just up to a month ago Mr. Koskinen, who is their Y2K guru, was saying there was no need for the legislation. So we have the Justice Department saying one thing, the Y2K guru at OMB saying something else.

But we are just happy to have them engaged in this. We look forward to working with them at the conference.

Mr. BRYANT. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Virginia (Mr. MORAN), one of the original cosponsors of this bill.

Mr. MORAN of Virginia. Mr. Chairman, I thank the distinguished chairman, the gentleman from Tennessee (Mr. BRYANT) for yielding time to me.

Mr. Chairman, I rise in opposition to this amendment and in support of the underlying bill. I know that this is a well-intended effort to come up with a compromise solution that will get the White House on board, but it needs to be stated explicitly and definitively on this floor that none of the organizations that need this help endorse this amendment.

There are over 300 organizations that are directly affected by the Y2K problem that understand the liability involved that support the underlying bill. That includes the National League of Cities, which is hardly a foil for the Republican Party. They discussed it at length, mayors and county board members. They concluded that this bill, the underlying bill, not the alternative amendment, is what they need.

Mr. Chairman, how important is this? It has been estimated that $2 to $3 will be spent in litigation for every $1 that will be spent on fixing the problem. But it is actually more serious than that. The Federal Government, according to the Federal Reserve, will spend about $30 billion fixing its Y2K computer problem. The private sector, private industry, will spend about $50 billion. But it is also estimated that nearly $1 trillion will be spent in litigating the problem.

What kind of an allocation of resources is that? That is insane. In fact, and I want every Member in this body to listen to this, a panel of experts that studied the Y2K problem of the American Bar Association came up with the conclusion that there could be more litigation involved in Y2K than asbestos, breast cancer implants, tobacco, and Superfund liability combined. This could be the greatest liability expense this Nation will have experienced. Imagine, asbestos, breast cancer implants, tobacco, and Superfund liability combined may equal the amount of litigation involved in Y2K.

The problem is, there are no really bad actors here. Nobody deliberately wants to keep their computer programmed in a way that is not useful for the 21st century. That would be nuts. Everybody is trying to fix this. The problem is that some people have seen a disincentive to fix it because of the potential liability.

The underlying bill fixes the problem. I do not think the alternative amendment does. I will vote against the alternative amendment and for the underlying bill.

Mr. CONYERS. Mr. Chairman, I yield myself 3 minutes.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, this from the San Jose Mercury News:

Y2K bills are buggy themselves . . . the legislation is still evolving, but the trend so far is that Congress is slighting consumers of hardware and software in its desire to protect the high-tech industry.

The New York Times:

. . . the legislation is misguided and potentially unfair. It could even lessen the incentive for corrective action . . . the government should not use the Millenium bug to overturn longstanding liability practices. A potential crisis is no time to abrogate legal rights.

The Washington Post:

The fear of significant liability is a powerful incentive for companies to make sure that their products are Y2K compliant and that they can meet the terms of the contracts that they have entered.

So this substitute, Mr. Chairman, seeks to repair the tremendously one-sided advantages that are granted in Y2K. I believe that many responsible computer organizations will have no problem whatsoever working with the Lofgren-Conyers-Boucher substitute.

In addition, this substitute increases legal certainty for the defendants in Y2K by specifying that their contracts shall be fully enforceable, by preserving their ability to assert the defense of impossibility or commercial impracticability.

The substitute also helps to ensure that defendants who are responsible for only a small portion of their damages are not held responsible for damages caused by other tort feasors.

So here we have it. Do we really want to go down in flames by resisting a well-crafted substitute and risk a veto, or do we want to accept something that has many of the elements of the original bill, the underlying bill in it?

I think the smarter, wiser, more correct legislative course is to follow the substitute, and let us all work together and get this through the Senate and signed by the President into law.

Mr. Chairman, I reserve the balance of my time.

Mr. BRYANT. Mr. Chairman, I am pleased to yield 2 minutes to my colleague, the gentleman from Missouri (Mr. TALENT).

Mr. TALENT. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I want to speak in support of the underlying bill and against the substitute. I certainly hope we can work something out. I am glad that there is some consensus that we need to do something.

Here is my concern. A small business has done everything it can to become Y2K compliant. It has gotten ready. It is Y2K compliant, but one of its suppliers is not. That may not even be a domestic supplier, it could be a foreign supplier.

So as a result, that small business is not able to deliver on time to maybe a big business, so the big business sues. It just seems to me the underlying bill, which has some commonsense things in it, says, look, you cannot recover punitive damages that are greater than three times your actual damages. There should be some relationship between the damage award you get and the actual damages you suffer. That seems to me to make sense.

I also very much like the provisions in the underlying bill that are designed to discourage fraudulent or nuisance actions, strike actions. When you file a lawsuit and you really know you cannot win if you go to trial, but you

know that small business does not want to spend $40,000 or $50,000 or $60,000 or $70,000 defending itself, so you file the thing. You have this big punitive damages award hanging over the small business. You go and say, well, for $20,000 or $25,000, we will dismiss the lawsuit. That is what we call a strike action, a nuisance action.

The underlying bill has a safeguard. It says, if you think there is fraud, state the basis for believing there is fraud in your lawsuit. What is wrong with that? One of my concerns about the substitute is that it does not have that in there. You should not be able to file a lawsuit alleging fraud without having a basis for it, and then go on a fishing expedition trying to find it that is costly for the small business defending the action.

I like the underlying bill. I think it is better than the substitute. I urge the House to oppose the substitute. I hope we can work something out and get a consensus measure. Certainly the bill has bipartisan support. I would like something the President could sign.

Y2K is a difficult enough problem for the small business community without having to be concerned about nuisance actions, so I would urge the House to oppose the substitute and support the underlying bill.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I believe, with many of my colleagues, that frivolous litigation is already a real concern to the business community and needs to be addressed by Congress.

But the legislation, the underlying bill that is before us, would make dramatic changes in Federal, procedural, and substantive law at both the Federal and State levels. This example just given by the previous speaker is the perfect example. There is no other kind of lawsuit where you have to plead fraud in the way that the underlying bill contemplates. Why should we do it just for one class of lawsuits?

We need to make sure that year 2000 liability legislation we pass does not undercut incentives that will encourage companies to fix year 2000 problems. The amendment that we have before us would encourage entities to fix year 2000 problems now, and would also provide a method for weeding out any future frivolous lawsuits, while providing an outlet for legitimate claims.

I also think that it would be foolish to establish an unwarranted precedent to limit damage awards in product liability cases, yet another example of how we are changing jurisprudence. I think it is important to discourage frivolous lawsuits that may come as a result of the year 2000 glitch, but this body should not pass overbroad legislation that will hurt both businesses and consumers who have legitimate claims.

One of the most important provisions in the substitute specifies that those defendants determined to be only minimally liable for the year 2000 consumer problem will be held to be only proportionally liable by the court. This is a far more palatable alternative to completely eliminating joint and several liability altogether, which is what the underlying bill does.

The substitute provides that the court will have discretion to determine whether a defendant that is minimally liable will be held jointly and severally liable. There is little disagreement about encouraging resolution of year 2000 problems without resorting to litigation. The amendment strikes the needed balance, and it can pass and it can be signed into law.

The year 2000 is just a little over 6 months away. Congress needs to act now to pass a law everybody can agree with, instead of dithering around for the next 6 months trying to figure out how we are going to expedite resolution of the year 2000 glitch, and expedite this resolution for the business community and the consumer as well.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong opposition to the Conyers substitute. I commend the gentleman from Michigan, the gentlewoman from California, and the gentleman from Virginia for their efforts to work in this area, but this amendment, this substitute, simply does not address the problems that are addressed in the bill offered by the gentleman from Virginia (Mr. DAVIS), and as a result, I must support the bill.

Let me point out what those differences are. First, the amendment would allow vague and unsupported allegations of fraud to survive a motion to dismiss.

Like H.R. 775, the Conyers amendment recognizes that heightened pleadings standards are necessary to screen out frivolous suits at the motion to dismiss stage before defendants and plaintiffs run up huge litigation costs.

Unlike H.R. 775, however, the substitute would not require plaintiffs to plead with particularity the facts supporting allegations of fraud. This is a major omission. Prior to the enactment of the Private Securities Litigation Reform Act in 1995, abusive fraud suits were a major problem.

Similar suits inevitably will be brought in the Y2K area, yet it is fundamentally unfair for a plaintiff to accuse a defendant of acting with a fraudulent state of mind unless the plaintiff is able to articulate some factual basis for that allegation.

The substitute does not impose a meaningful duty to mitigate damages, and therefore does not encourage remediation. The Conyers amendment provides that a plaintiff may not obtain damages that it could reasonably have avoided in light of information that it received from the defendant, but unlike H.R. 775, the substitute does not create a mitigation requirement if the plaintiff becomes or should have become aware of the information from other sources.

Surely, however, if someone could easily avoid damage by taking simple steps of which he or she is or should be aware, it is perverse to allow that person to avoid taking those steps to suffer the damage and then sue a third party for compensation.

□ 1515

The amendment does not impose meaningful limits on joint and several liability and thus does nothing to prevent strike suits against defendants with deep pockets.

Proportionate liability is an essential response to the threat of abusive litigation. Without proportionate liability, plaintiff's lawyers always will name a deep-pocketed defendant in their suits so long as there is any chance that the people who are really responsible for the injury are judgment-proof.

The lawyers will know that the deep pocket will have to pay the entire judgment so long as a jury can be persuaded to find it even 1 percent responsible. As was true in the securities context prior to enactment of the PSLRA, that kind of scheme simply encourages strike suit litigation by giving lawyers the leverage to bring abusive suits that the defendant will have no choice but to settle.

The Conyers amendment, however, does not impose a real limit on joint and several liability. It makes joint and several liability the rule unless a judge exercises his or her discretion to order otherwise. This scheme offers no protection in State courts with plaintiff-friendly judges. Because the outcome in every case will be uncertain, defendants who will not know until after trial whether they face joint and several liability will have to pay coercive settlements even when they did nothing wrong.

Indeed, the amendment would make the law considerably worse than it is now by preempting the many State laws that depart from pure joint and several liability.

Also, this substitute does nothing to advance reasonable efforts to remediate Y2K problems. It does not limit punitive damages and, therefore, does nothing to discourage abusive suits by lawyers who seek to win the litigation jackpot.

The substitute would keep national class actions involving out-of-State defendants in State court, an abuse that we have attempted to correct in this legislation and is one of the main reasons why I cannot join in supporting this substitute.

I urge my colleagues to oppose it and to support H.R. 775.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, how much time remains on each side, sir?

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) has 11 minutes remaining, and the gentleman

from Virginia (Mr. GOODLATTE) has 11¾ minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

This question of fraud has to be looked at a lot more carefully than the gentleman from Virginia (Mr. GOODLATTE) has put forward. The pleadings around fraud have been established over generations of litigation in the American court system.

The requirement for particularity that he finds missing in our bill is missing because that is the state of the law. But we added materiality. The base bill talks about fraud.

Mr. Chairman, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time.

Mr. Chairman, I would like to pick up where the gentleman from Michigan (Mr. CONYERS) was raising several points, and I appreciate the points he was making on this.

I rise in strong support for the Conyers-Boucher-Lofgren substitute. I have spoken to the gentleman from Virginia (Mr. GOODLATTE) on the floor and thanked him for his leadership on this issue, and I think the temperament or the tone of the debate suggests that it is not acrimonious debate. I think we all agree that we have a problem that we should face collectively in dealing with Y2K.

I think the key element is preparedness. But as I heard the gentleman from Virginia (Mr. GOODLATTE) refuting the amendment, he was refuting it by suggesting the things that were not in it or the things that the amendment was reestablishing, the joint and several liability, the lack of a cap on punitive damages.

But what he was saying is that the state of the law in America now is not good enough. That is the concern we have with the underlying bill and why I am supporting the Y2K substitute or this legislation that is being offered.

The substitute was put together in cooperation with the high-tech industry and without the assistance of another theme, which is tort reform, which I think we can all debate and have our opinions. We can agree and disagree. But this is not legislation that is dealing with tort reform.

It is an isolated, portended problem that will come up, or we believe will come up, with the Y2K pending crisis. We realize that we must address it, but the concern we have in dealing with this legislation, the Y2K problem, is that we need to have solutions, as the gentleman from Michigan (Mr. CONYERS) has said, that can bring about bipartisan support and frankly will, if you will, withstand a veto. Why not accept the substitute which clearly responds to some of the concerns we have?

The underlying legislation, for example, for instance, it keeps the enhanced pleading requirements, but it jettisons the reasonable efforts defense. That defense basically gives carte blanche protection to any Y2K solution provider who provides only the bare minimum of assistance to their clients.

This is unprecedented in American law. This is what the underlying bill does, which provides ample statutory and common law defenses in legal relationships.

Mr. Howard Nations, a well-respected scholar from my hometown of Houston, when he was testifying before both the Committee on Science and the House Committee on the Judiciary, repeatedly pointed out that the Uniform Commercial Code and State-developed common law were more than adequate to handle the problem of the Year 2000 transition.

I am concerned at the negative stereotypes of State court systems. I believe many lawyers practice in those courts, defendants' and plaintiffs' lawyers, and find a fair and balanced judicial system.

Those legal sources include a wide assortment of defenses available to named defendants, like the business judgment rule, the statute of limitations and the obligation of plaintiff to mitigate damages.

This substitute saves the cooling-off provisions but reforms the provisions on joint and several liability.

Mr. Chairman, I would simply say that there are so many features in this underlying bill that the amendment that is now being offered is a fair response to the capping of punitive damages, and it is a fair response to bipartisanship.

I hope, Mr. Chairman, that we can vote on this amendment in a bipartisan manner and get a bill that can pass and that will serve the American people.

Mr. Chairman. I rise in strong support of this substitute, which is the product of a great deal of hard work by Congressmen CONYERS and BOUCHER, and Congresswoman LOFGREN, who represents the high-tech community in California.

This substitute was put together in cooperation with the high-tech industry, and without the ''assistance'' of the powerful tort-reform lobby. As a result, it is a substitute that is narrowly tailored to do the job it is needed to do—help people and businesses solve their Y2K problems with minimal discomfort.

It is a substitute that focuses H.R. 775 on the Y2K problem and its solutions, and stays away from controversial changes that may change the face of our legal system forever. For instance, it keeps the enhanced pleading requirements, but jettisons the ''reasonable efforts'' defense. That defense basically gives carte blanche protection to any Y2K solution provider who provides only the bare minimum of assistance to their clients. This is unprecedented in American law, which provides ample statutory and common law defenses in legal relationships. Mr. Howard Nations, a well-respected legal scholar from my home town of Houston, when testifying before both the House Science and Judiciary Committees repeatedly pointed out that the Uniform Commercial Code (UCC) and state-developed common law were more than adequate to handle the problem of the Year 2000 transition. Those legal sources include a wide assortment of defenses available to named defendants, like the ''business judgment rule'', the statute of limitations, and the obligation of the plaintiff to mitigate damages.

This substitute saves the ''cooling off period'', but reforms the provisions on joint and several liability. Joint and several liability was developed by courts and legislatures over our history to take the burden of innocent plaintiffs who have been wronged by many defendants. It allows them to receive satisfaction without having to track down every defendant that may have wronged them. The unamended version of this bill basically eliminates this well-established principle, and puts the onerous burden of plaintiffs to seek justice, perhaps all over the globe. This substitute vastly improves the provisions on joint and several liability by allowing only those defendants who have had minimal involvement with the facts in question to escape complete liability.

This substitute eliminates much of the tort-reform clutter that pervades this bill. It eliminates the caps on punitive damages, which it sets at $250,000. It strikes the provisions that federalize state class action laws. But at the same time, this substitute brings relief to consumers who might otherwise be caught under the auspices of this onerous legislation. It also keeps the provisions that will allow courts to discriminate against frivolous lawsuits.

Furthermore, because of the impending veto threat, I urge each of you to give the House a chance to pass a bill that can actually be signed into law by voting for this Democratic Substitute. This substitute shows that we can address this difficult and complex Y2K problem without upsetting the delicate balance that has been slowly developed and nurtured by our system. We can do right by the American people—vote ''aye'' on the Conyers/Lofgren/Boucher substitute.

Mr. GOODLATTE. Mr. Chairman, I yield myself 2 minutes, and I yield to the gentleman from Michigan (Mr. EHLERS) for the purpose of a colloquy.

Mr. EHLERS. Mr. Chairman, I want to thank the gentleman from Virginia (Mr. GOODLATTE) for yielding time for purposes of this colloquy; and I commend him for all the hard work he has done to address the Y2K litigation issue in this bill.

As the gentleman knows, I have expressed a deep concern to him and others about the bill's failure to distinguish between Y2K defects that originated before the issue was widely recognized as a problem and the Y2K defects that originated after the issue was commonly known. I believe this is a critical distinction to make if we are going to responsibly modify the laws governing liability in Y2K-related matters.

Further, I am concerned about the absence in the bill of affirmative incentives for manufacturers to fix defective consumer products in an expeditious manner should they fail because of a Y2K problem.

It is especially important to explicitly address the liability and damages

issues raised by the extensive use of embedded chips or microprocessors. These are widely used in consumer products, and Y2K defects in these chips can greatly inconvenience and perhaps damage the businesses and property of the owners of common consumer products.

It was my desire to address what I see as a deficiency in the bill with an amendment to exempt from the bill those products manufactured after the beginning of 1995.

While I was prohibited by the Committee on Rules from offering my amendment on the floor today, I am pleased that the gentleman from Virginia and I have made some progress in arriving at a mutually agreeable solution to these issues. I am encouraged by the gentleman's pledge, as well as the assurances from other bill sponsors, to attempt to specifically address these matters as work on the bill continues in conference.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman from Michigan and appreciate hearing his concerns about the additional issues that this legislation could be expanded to address. As he accurately stated, I have agreed to attempt to specifically address these matters as work on the bill continues in conference.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. LOFGREN), the major author of our substitute.

Ms. LOFGREN. Mr. Chairman, although we do not have time to go into a full debate on everything, I do think it is important to clarify a couple of points that have been discussed.

First, there is a provision in the substitute on page 14, on line 13, relative to material defects that must be applied with particularity; and I think that is very specific and does put requirements on the pleaders.

There was a comment made that the intent or the drift was that a court might just remove the provisions relative to joint and several for a reason that was frivolous. It is only fraud that would allow a court to do that if there was minimal negligence.

The definition of fraud found on page 21 is standard definition of fraud. I mean, it is not something new. If it is less than perfect, I do not know if it is, but certainly we can work on it. But I thought it was important to clarify those.

Mr. GOODLATTE. Mr. Chairman, it is my pleasure to yield 3 minutes to the distinguished gentleman from California (Mr. DREIER), chairman of the Committee on Rules, a leader on this and other technology issues.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Chairman, I rise in strong opposition to the measure and strong support of the bill. But before I speak about it, I would like to especially compliment the distinguished gentleman from Virginia (Mr. GOODLATTE), who has been doing a superb job on this measure. I would also like to say that it has been a pleasure to work with the gentleman from Virginia (Mr. DAVIS), who successfully brought the Fairfax Journal editorial endorsement of our position in this morning.

Let me say that, this morning, as I closed the debate on the rule, I talked about the fact that both plaintiffs and defendants are very supportive of the overall measure. I think it is important to underscore that there are a wide range of high-tech organizations out there, associations, which are opposed to the Conyers substitute and supportive of our underlying bill.

They include the American Electronics Association, the Business Software Alliance, Computing Technology Industry Association, the Information Technology Association of America, the Information Technology Industry Council, the Semiconductor Industry Association, and the Software and Information Industry Association.

Also, the coalition supporting our bill is basically well beyond high-tech companies. The single largest small business organization in this country is the National Federation of Independent Business. They have hundreds of thousands of members, I know, all over the country. In fact, I was an NFIB member before coming to this institution. I will say that they are strongly supporting our measure and opposing this substitute.

We have also big businesses involved supporting this thing. So it really is a collection of entrepreneurs, small and large, who are supportive of the underlying bill and opposed to this substitute which is being proposed.

This legislation does not eliminate anyone's right to sue. It is very important that their day in court is maintained. Instead, the common-sense legislation prevents the threat from litigation from stifling good-faith efforts to address potential Y2K problems before they happen.

I reluctantly oppose the substitute. I have enjoyed working with my good friends on the other side of the aisle and will continue in the months and years to come to do that. But I believe that the underlying bill is the best approach for us to take.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Michigan (Mr. BONIOR), the minority whip.

Mr. BONIOR. Mr. Chairman, last week on the floor, we dealt with the bankruptcy bill, and my Republican colleagues talked about personal responsibility and, indeed, past legislation to deal with personal responsibility on the question of bankruptcy.

Today, we have a bill that exempts corporations from that same responsibility. Last week, responsibility; this week, exemption from responsibility.

This bill strips consumers of their right to seek justice in the courts. The bill, instead of addressing legitimate concerns of the high-tech industry, which the Lofgren-Conyers-Boucher substitute does, this bill is an example of gross excess. It is radical. It is extreme in its approach.

□ 1530

It deprives, as we have heard from several speakers here, consumers and small businesses of their right to seek full damages. And for the life of me, I say to my friend, the gentleman from California (Mr. DREIER), who just spoke, if the NFIB really cares about the small business folks, I do not for the life of me understand where they are on this. It even deprives them of these rights to seek full damages in cases of deliberate and malicious misconduct.

It limits the ability of consumers to join together in class action suits. Of course, then we empower big corporations to divide and conquer. It discourages consumers and small businesses from going to court in the first place because they risk the burden of massive court costs if they lose their case against wealthy corporations.

Yes, Y2K is a serious problem, but this is not a serious solution. All corporations should be held responsible for their actions. This bill sets up a double standard. It absolves special groups of corporations from their responsibilities. This act would effectively strip consumers of their rights to pursue justice in the courts and it would send a terrible message that some corporations can defraud consumers and just walk away.

Mr. Chairman, I urge my colleagues to support the Lofgren-Conyers-Boucher substitute. They strike a good balance between the legitimate concerns of the high-tech industry and the critical need to maintain strong protection for consumers and small businesses.

Mr. GOODLATTE. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. ARMEY), our distinguished majority leader.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for yielding me this time.

Colleagues on both sides of the aisle ought to take a quick look at where we are today and say what is this really all about and what is our responsibility as a legislative body, indeed the Congress of the United States.

Well, what it is about, my colleagues, is the Year 2000 and the extent to which the American people do not fully realize how their year can be affected by this wonderful New Year's Eve celebration when the clocks turn over if the computer chips do not. This is a big deal.

My nightmare about Y2K is sitting at home, as I do with my wife on New Year's Eve, watching the celebration in Times Square as we have always done on New Year's Eve, watching that ball begin to drop, and participating as we do with the countdown, 5, 4, 3, 2, 1, and then blackness. The TV goes off, the

ball does not hit the bottom and we have people stranded all over Times Square. Their watches have stopped working. They cannot get to an ATM to give them cash. They cannot get a cab. Their electricity does not work. Their water has stopped running. Lord have mercy if they do get home. They cannot get up the next morning because their alarm does not go off. We could have all kinds of confusion. This is a big, big, big deal.

Now, I have to tell my colleagues that all those wonderful people in the computer industry that are so concerned about the quality of their work, as they are, want to solve this problem. But they are like the good Samaritan. Or perhaps they are not. The good Samaritan had no fear. He stopped and helped. But we know today that there are many potential good Samaritans, we talk about them in the medical profession, where they do not stop and help because they are afraid of the ensuing lawsuit.

Now, we have documentation right now of millions, hundreds of thousands of young, skilled, able people with the technical ability to solve this problem on behalf of all of America, wherever it presents itself, who are saying, unlike the good Samaritan, I do not dare stop to help; I do not dare get involved; I cannot afford the risk of the lawsuit exposure that I face under current law. What a shame.

We cannot in good conscience in this body allow that to be the case. Our responsibility is to help those with the ability to solve the problem before the year gets here. Let them be free to understand that they should engage and, if they do engage, they will not be subjected to unreasonable, excessive, greedy lawsuits.

We should have a system of law that addresses this problem in such a way as to reward cooperation and does not reward confrontation. We should protect the problem solvers, not those that are sitting on the sidelines now licking their chops hoping the problem will not be solved so they can move in like a bunch of buzzards and vultures and feed off the carcasses. That is not, my colleagues, what responsibility is all about in America.

I know the lawyers have been planning on this day. We all know about the training sessions they have had. And, unfortunately, all those bright young technicians with all that great ability know about it, too. So all of the visibility that the legal profession has had in terms of their preparing themselves to swoop down on the carcasses of our dead toasters and create a lawsuit has said to these young people, I am staying out of harm's way. I will not get involved.

We have to look at ourselves and our responsibility and we have to recognize one very simple thing, and we can address it with this simple question. If we vote ''yes'' on this legislation, we will have found the right answer to this question. Do we want to live in a world between now and January 1 where Y2K is faced by a more well-prepared legal profession than a well-prepared America? I do not believe that is what our objective should be.

Let us reward those who would cooperate and fix the problem. Let us insulate them from frivolous lawsuits, and let us stop the needless, senseless confrontation that is just designed to line the lawyers' pockets over somebody else's misfortune and failure.

We can solve this problem. We are a great Nation. Our young people are outstanding. How many of them do we know that are doing things now in this electronic and computer field that many people my age do not even understand. They are wizards. They are wonderful. They ought not to be beset even by the fears of lawyers. Let them do their thing, let them be free.

And on New Year's Eve, I promise my colleagues, if we leave it to the technicians and keep the lawyers out of the way, as this bill would do, we will sit there and we will count 5, 4, 3, 2, 1. And in the bright light of our TV and living room lights, I will get that kiss from my wife that I ought to get on New Year's Eve.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. SANCHEZ), and I say to the majority leader that if we do not get the substitute, there will be that gloomy prediction.

(Ms. SANCHEZ asked and was given permission to revise and extend her remarks.)

Ms. SANCHEZ. Mr. Chairman, I rise today in support of the Democratic alternative. If we do not do the Democratic alternative, we are about to squander the ability to do a bipartisan bill for the problem of the Year 2000.

Joined by the ranking member, the gentleman from Michigan (Mr. JOHN CONYERS) and the gentleman from Virginia (Mr. RICK BOUCHER), Democrats on the Committee on the Judiciary sought to resolve the three most important problems identified by the high-tech community by offering:

Number one, a cooling-off period so that parties might settle their differences out of court; secondly, additional pleading requirements tailored to the Year 2000 problem to discourage frivolous lawsuits; and, throw, a fair way for the parties with Year 2000 claims to share the liability.

The Democratic substitute is narrowly tailored to address Y2K concerns. Nothing else, only what is necessary. And, therefore, it actually is a very good start.

My colleagues have found a fair and effective solution so that those who are negligent are held responsible, while those who have little to do with the bug are not punished for something they did not do.

Mr. GOODLATTE. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. CUNNINGHAM).

(Mr. CUNNINGHAM asked and was given permission to revise and extend his remarks.)

Mr. CUNNINGHAM. Mr. Chairman, I know people on both sides of the aisle have got good motives, but I would like to just once have a bill that comes to the House floor that does not benefit the trial lawyers.

If we look at some health care bills, they are a boon to trial lawyers. And they will raise the cost of health care because there are no caps on punitive damages, and lawsuits will drive health care costs up. Tobacco makes the trial lawyers rich. And now we look at this amendment, and it is always the trial lawyers that benefit in these things. Why?

In my opinion, it is because they give 90 percent of their campaign funds to Democrats. This substitute would mean a boon for trial lawyers. Let us set the trial lawyers apart and let us work for the betterment of people, not the trial lawyers but for the people. Oppose this substitute, and support this important bill.

Mr. CONYERS. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) has 2½ minutes remaining, and the gentleman from Virginia (Mr. GOODLATTE) has 4 minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

This is not a matter about what is going to happen on New Year's Eve and it is not a matter of what will happen to trial lawyers. I am sure somebody here besides me in the Hall must know that punitive damages are regularly set aside by judges who object to large amounts.

The high-tech community itself has made it clear that they are interested in a bill that specifically addresses liability issues unique to Y2K, but they are not interested in a far-reaching tort reform proposal. They want a narrowly tailored bill that will address the problem of frivolous lawsuits. We do that.

The base bill, H.R. 775, goes well beyond reasonable reform by failing to protect consumers. They shield grossly negligent defenders and they harm innocent plaintiffs. Instead of creating a positive incentive, this creates new reasons to avoid remediation. H.R. 775 should not be supported by ourselves and it will not be signed by the President.

We have the real deal. We have the way out for both the high-tech community and those who have been unfortunately affected by it. The Y2K problem, as the gentlewoman from California (Ms. LOFGREN) stated earlier, is a legitimate issue, but has, in my judgment, been turned into a political tool. It is unfortunate that the information technology community, with its legitimate concerns, are being used as pawns in this political game.

The base bill goes well beyond reasonable reform. It is unprecedented and unjustified and is also going nowhere. So vote for the substitute for a realistic response to a potentially serious problem without overreaching.

Mr. Chairman, I urge each of my colleagues to join me in voting for this good faith effort to deal with the Y2K problem. Support the Lofgren-Conyers-Boucher substitute.

Mr. Chairman, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself 45 seconds.

Mr. Chairman, in a moment I will yield the remaining time to the gentleman from Virginia (Mr. DAVIS), the sponsor of the legislation, to close our arguments against this substitute and for the bill.

Before I do that, I think it is only appropriate that we recognize some people. I particularly want to commend the gentleman from Virginia (Mr. DAVIS), as well as the chief cosponsor of the legislation, the gentleman from Virginia (Mr. MORAN), the gentleman from California (Mr. DOOLEY) and the gentleman from Alabama (Mr. CRAMER) of the Democratic side, the gentleman from California (Mr. DREIER) and the gentleman from California (Mr. COX) on our side of the aisle for their chief cosponsorship of this legislation.

In addition, I want to recognize the staff, who worked very, very hard on this; particularly Diana Schacht of the Committee on the Judiciary; Ben Kline of my office; Trey Hardin, Amy Heering and Melissa Wojak from the office of the gentleman from Virginia (Mr. DAVIS); as well as John Flannery, from the office of the gentlewoman from California (Ms. LOFGREN); Perry Apelbaum and Semora Ryder of the office of the gentleman from Michigan (Mr. CONYERS); Ben Cohen of the office of the gentleman from California (Mr. COX); and Brian Bieron, and Don Freeman. They all worked very hard. This has been done in the spirit of comity.

Mr. Chairman, I yield the balance of my time to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. Mr. Chairman, just to set the record straight, the high-tech industry rejects the substitute amendment offered by the gentleman from Michigan (Mr. CONYERS) and they support the underlying bill H.R. 775. That has been signed and put into the record by a number of representatives of the software industry and the information technology industry.

In addition to that, I want to thank the Chamber of Commerce, the National Association of Manufacturers, and the NFIB for putting together a coalition of groups that have helped us in lobbying and getting support for this legislation and making Members aware of the consequences if we do not act in this body on this legislation in a timely manner.

□ 1545

Now, we have heard a lot of talk today about we need to solve this on a bipartisan basis, and I agree with that. This is the beginning of a long trek. It is not the end. And we look forward to working with our colleagues that maybe could not find themselves able to support this legislation and hope we can bring them on board and the administration on board as we move forward.

But we have a bipartisan bill. It is H.R. 775. There are numerous Democratic and Republican sponsors and cosponsors of this legislation. What we have before us now is a partisan substitute. If we are really going to solve this problem together, we need to work together and bring Members of both parties together.

The whip from the other side talked about taking personal responsibility. Our legislation takes personal responsibility. Under the underlying bill, if they are damaged in a Y2K suit, they get their full economic damages. In fact, they can get three times their economic damages in punitive damages or $250,000, whichever is larger.

We do not take that away. What we do take away is one of the three legs of this legislation, and that is unlimited damages, for whatever reason, for punitive damages that drive up insurance costs, damages that drive up the cost of settlement and encourage more lawsuits and discourage companies from trying to fix the problems right now that we are attempting to solve in Y2K. Because companies will not fix a problem if they can be held liable down the road, even if they better that product should it fail.

Joint and several liability also would pick the pockets of people who are improving these because they happen to be a little wealthier and easier to reach. Our legislation keeps proportional liability. This is a key underpinning of this legislation, to reward companies for making products better, to reward companies for trying to come in and make a product better so that it will deliver on Y2K, as complex or as messed up as it might have been when they initially visited it.

And finally, the third leg is notification. And this is a consumer issue. If I am going to be represented in a Y2K suit, I ought to be told by that attorney I am being represented in court before they cut a deal on my behalf and decide what kind of damages I get.

Our legislation simply says that if an attorney is going to represent me in a class-action suit, I ought to be notified of that and have the opportunity to opt out of that. That is fair consumer legislation. That is not radical tort reform. That is something that every consumer ought to have. And we require that, as well.

I want to commend my colleagues from both sides of the aisle for working together with this in a bipartisan way. I want to continue to invite the administration, the President, and the Vice President to work with us on this legislation to make it work for everyone, and again, thank the business groups, particularly the Chamber of Commerce, which represent small businesses and large businesses nationally that will be plaintiffs and defendants in this legislation, for helping us put this together.

I ask for rejection of the fig leaf of a partisan substitute and support of bipartisan H.R. 775.

Mr. FORD. Mr. Chairman, I rise today in support of the Conyers substitute because I do think that there is a need for reasonable legislation that addresses this once-in-a-lifetime problem.

I am a cosponsor of this legislation, but I cannot support it in its current form for a number of reasons:

The use of a ''reasonable efforts'' standard for the sole defense in Y2K litigation exceeds the burden of proof in most federal and state court civil proceedings. Normally, plaintiffs must meet the less onerous ''preponderance of the evidence'' standard.

In addition to setting up a new legal standard, this term is at best ambiguous. How will the courts know how to interpret this language?

Finally, the supporters of this legislation are inconsistent. Just last week this Chamber passed a bankruptcy reform bill with the cries of ''personal/corporate responsibility''. In its current form, this legislation would permit some of these same entities to evade any sort of responsibility.

This Democratic substitute is narrowly tailored to address Y2K concerns. Like the base bill, it provides for a cooling off period, has additional pleading requirements to discourage frivolous lawsuits, and provides for a fair way for the parties with Y2K claims to chair the liability.

I urge my colleagues to support the Conyers substitute.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 190, noes 236, not voting 8, as follows:

[Roll No. 126]

AYES—190

Abercrombie	Clayton	Ford
Ackerman	Clyburn	Frank (MA)
Allen	Conyers	Frost
Andrews	Costello	Ganske
Baird	Coyne	Gejdenson
Baldacci	Crowley	Gephardt
Baldwin	Cummings	Gilman
Barrett (WI)	Danner	Gonzalez
Becerra	Davis (FL)	Green (TX)
Bentsen	Davis (IL)	Gutierrez
Berkley	DeFazio	Hall (OH)
Berman	DeGette	Hastings (FL)
Berry	Delahunt	Hill (IN)
Bishop	DeLauro	Hilliard
Blagojevich	Deutsch	Hinchey
Blumenauer	Dicks	Hinojosa
Bonior	Dingell	Hoeffel
Borski	Dixon	Holt
Boswell	Doyle	Hooley
Boucher	Duncan	Hoyer
Brady (PA)	Edwards	Inslee
Brown (FL)	Engel	Jackson (IL)
Brown (OH)	English	Jackson-Lee (TX)
Capps	Etheridge	Johnson, E. B.
Capuano	Evans	Jones (OH)
Cardin	Farr	Kanjorski
Carson	Fattah	Kaptur
Clay	Filner	

Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Scott
Serrano
Sherman
Shows
Skelton
Smith (WA)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Terry
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—236

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cramer
Crane
Cubin
Cunningham
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Doggett
Dooley
Doolittle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Eshoo
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Scarborough
Schaffer
Schakowsky
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Toomey
Upton
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—8

Barton
Brown (CA)
Cox
Jefferson
Napolitano
Rangel
Slaughter
Weller

☐ 1610

Mr. EWING and Mr. CLEMENT changed their vote from ''aye'' to ''no.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute made in order as original text, as modified, as amended.

The committee amendment in the nature of a substitute, as modified, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. BURR of North Carolina) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 775) to establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes, pursuant to House Resolution 166, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Conyers moves to recommit the bill H.R. 775 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Add after section 104 the following:

SEC. 105. YEAR 2000 ACTIONS INVOLVING FOREIGN PRODUCTS OR SERVICES.

(a) GENERAL RULE.—In any year 2000 action for damages or other relief that is sustained in the United States and that relates to the purchase or use of a product or service manufactured or distributed outside the United States by a foreign seller or manufacturer, the Federal court in which such action is brought shall have jurisdiction over such seller or manufacturer if the seller or manufacturer knew or reasonably should have known that the product or service would be imported for sale or use in the United States.

(b) ADMISSION.—If a foreign seller or manufacturer of a product or service involved in a year 2000 action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in the action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign seller or manufacturer involved in the action is located, has an agent, or transacts business.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

☐ 1615

Mr. CONYERS. Mr. Speaker, this motion to recommit provides for jurisdiction, service of process and discovery in Y2K actions brought against corporate defendants located outside of the United States. It is based on the same amendment I offered on the product liability bill in another Congress which twice passed the House by overwhelming bipartisan votes.

Currently, my amendment responds to a couple of problems. It is inordinately difficult for United States citizens and businesses to bring legal actions against foreign defendants to obtain compensation for harm inside the United States. We correct it with this motion to recommit.

We respond to the problem, first, by creating a nationwide context test whenever a foreign defendant is sued in Federal court if it knew or reasonably should have known that its conduct would cause harm in this country. This type test has repeatedly been upheld by the Federal courts and is a part of the law in the Foreign Sovereign Immunities Act.

The second thing the amendment would do is provide for worldwide service of process. Presently, a major problem with service is that each of our States requires different and varying methods of process. Uniform worldwide

service of process will fix this problem and is consistent with other Federal laws, including the Clayton Act and securities laws, permitting service wherever the defendant may be found.

Third, my amendment ensures that the foreign persons are subject to the same rules of discovery as our own citizens and corporations when they are sued for wrongdoing. This is a particular problem in the context of Y2K litigation.

In the late 1980's and early 1990's, the percentage of foreign-made computer components and U.S. computers was as high as 65 percent. The most recent information supplied by the Commerce Department predicts Asian computer suppliers have now announced their intentions to wrest control away from U.S. rivals and pose a challenge in high-performance computer systems and PCs. If they succeed, the very least we can do is make sure they are subject to the rules of our legal system.

So, with a record trade deficit last year of $165 billion, a deficit last month of $20 billion, our Nation can no longer afford to favor foreign defendants in court. Please join us on both sides of the aisle in voting for this important amendment.

Mr. Speaker, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. BURR of North Carolina). The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Speaker, I commend the gentleman from Michigan (Mr. CONYERS) for the comity in which this debate has taken place, and I extend my compliments to other Members on his side of the aisle as well, including a number who are supporting this legislation, but I must rise in strong opposition to his motion to recommit.

The motion raises significant constitutional and international law concerns, represents a serious potential irritant in our bilateral relations with other countries and raises a specter of foreign retaliation against American firms, and that is the matter on which I am most strongly opposed.

If we were to go ahead and enact this provision, we would be opening U.S. companies all over the world to treatment different than they are receiving now because they are receiving it under international treaty obligations that would expose them to treatment in courts elsewhere that would jeopardize their position.

Mr. Speaker, one of the provisions of this motion to recommit would subject foreign corporations to trial in U.S. courts without their ever having to be in the courtroom, and if the same provision were applied to U.S. companies in countries all over the world, one can only guess what kinds of denial of due process would occur for U.S. companies and U.S. businessmen and women treated with this same consideration in the courts of other countries who today comply with international treaty obligations that do not expose our corporations and businessmen and women to those considerations.

The amendment implicates the fifth amendment and international law, and it is possible that it would compromise the due process rights of a foreign defendant. The extent to which American statutes apply to foreign nationals already is a point of contention in our foreign relations. We should proceed very cautiously in this area, especially since the gentleman's motion to recommit was not the subject of hearings. The amendment's requirement to force a foreign defendant to comply with U.S. discovery requirements failed to accord appropriate deference to the sensibilities and prerogatives of other countries.

Mr. Speaker, because the motion to recommit would invite retaliation against U.S. companies doing business overseas and might affect the level of foreign investment in the U.S., thereby creating unemployment, the business community and others in this country are strongly opposed to this amendment, and I encourage my colleagues to vote against the motion to recommit.

Mr. Speaker, I yield to the gentleman from Virginia (Mr. DAVIS).

Mr. DAVIS of Virginia. This is a deal killer. The gentleman knows that. I would ask if the administration supports this amendment. They have opposed it in the past.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, this is already the law. They do not have to support the amendment. This is an existing law in the United States Code Annotated as we speak.

Mr. DAVIS of Virginia. Mr. Speaker, I thank the gentleman very much.

Mr. CONYERS. The gentleman from Virginia is welcome.

Mr. DAVIS of Virginia. Because as a signatory to the Hague Convention, the United States is bound to follow its procedure rules, and in this particular case we do not think this rule is necessary if it is already in the law. Why would we put this in if it is already in the law?

The Commission of the European Communities and its member states have expressed strong objections to this in the past because it ignores the rights of defendants in countries outside the jurisdictions of business and in litigation. It ignores the sovereign rights of countries which have different procedural rules than we do; and, if it is enacted, it is likely that other countries will also ignore the provisions of the Hague Convention and begin applying their own procedural rules to American companies whose products entered the stream of commerce abroad. American businesses stand to lose, not gain, from this provision.

This makes mischief of what has been, I think, a pretty good debate and bill up to this point; and I urge that we reject this motion to recommit.

Mr. GOODLATTE. Mr. Speaker, this is an outstanding bill; and I urge my colleagues to oppose the motion to recommit and support this reform legislation which will truly help us enter the new millennium and deal with the potential Y2K bugs in a way that resolves these problems without encouraging the massive explosion of litigation that many have predicted.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on the question of the passage of the bill.

The vote was taken by electronic device, and there were—ayes 184, noes 246, not voting 4, as follows:

[Roll No. 127]

AYES—184

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Dixon
Doggett
Doyle
Duncan
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gejdenson
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E.B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall

Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Spratt
Stabenow
Stark
Strickland
Stupak
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOES—246

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Cubin
Cunningham
Davis (VA)
Deal
DeLay
DeMint
Diaz-Balart
Dickey
Dicks
Dooley
Doolittle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Toomey
Upton
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOT VOTING—4

Barton
Brown (CA)
Napolitano
Slaughter

☐ 1643

Mr. CHAMBLISS changed his vote from ''aye'' to ''no.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. BURR of North Carolina). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 236, noes 190, not voting 8, as follows:

[Roll No. 128]

AYES—236

Aderholt
Archer
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Bass
Bateman
Bereuter
Biggert
Bilbray
Bilirakis
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cramer
Crane
Cubin
Cunningham
Danner
Davis (VA)
Deal
DeLay
Dickey
Dooley
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Gekas
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Granger
Green (WI)
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Sisisky
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Toomey
Udall (CO)
Upton
Velazquez
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)

NOES—190

Abercrombie
Ackerman
Allen
Andrews
Baird
Baldacci
Baldwin
Barrett (WI)
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capuano
Cardin
Carson
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doolittle
Doyle
Duncan
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Ganske
Gejdenson
Gephardt
Gibbons
Gonzalez
Graham
Green (TX)
Gutierrez
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hoyer
Inslee
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Phelps
Pickett
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Skelton
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (NM)
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Weygand
Wise
Woolsey
Wu
Wynn

NOT VOTING—8

Barton
Brown (CA)
Cox
DeMint
Napolitano
Riley
Skeen
Slaughter

☐ 1652

Mr. RANGEL and Mr. MCINTYRE changed their vote from ''aye'' to ''no.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. DEMINT. Mr. Speaker, on rollcall no. 128, I was unavoidably detained. Had I been present, I would have voted "yes."

PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Speaker, I was unable to be present for rollcall votes 123, 124, 125, 126, 127 and 128.

Had I been present, I would have voted "yes" or "aye" on rollcall votes 124, 125, 126 and 127 and "no" or "nay" on rollcall votes 123 and 128.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1555, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2000

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 106–136) on the resolution (H. Res. 167) providing for consideration of the bill (H.R. 1555) to authorize appropriations for fiscal year 2000 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, which was referred to the House Calendar and ordered to be printed.

ANNOUNCEMENT OF INTENTION TO OFFER ON TOMORROW MOTION TO INSTRUCT CONFEREES ON H.R. 1141, 1999 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT

Mr. UPTON. Mr. Speaker, pursuant to clause 7(c) of rule XXII, I hereby notify the House of my intention tomorrow to offer the following motion to instruct House conferees on H.R. 1141, the emergency supplemental appropriations bill.

The form of the motion is as follows:

Mr. UPTON Moves that the managers on the part of the House at the conference on the disagreeing votes of the 2 Houses on the Senate amendment to the bill H.R. 1141 be instructed to insist that no provision—

(1) not in H.R. 1141, when passed by the House,

(2) not in H.R. 1664 when passed by the House or directly related to H.R. 1664,

(3) not in the Senate amendment to H.R. 1141, as passed by the Senate,

be agreed to by the managers on the part of the House.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3

Mr. SHOWS. Mr. Speaker, I ask unanimous consent to remove my name as cosponsor of H.R. 3.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 1141, 1999 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT

Mr. DEUTSCH. Mr. Speaker, I offer a motion to instruct conferees on the bill (H.R. 1141) making emergency supplemental appropriations for the fiscal year ending September 30, 1999, and for other purposes.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. DEUTSCH moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 1141 be instructed to insist on the funding level of $621 million contained under the heading ''Central America And The Caribbean Emergency Disaster Recovery Fund'' of the House bill for necessary expenses to address the effects of hurricanes in Central America and the Caribbean and the earthquake in Colombia.

The SPEAKER pro tempore. The gentleman from Florida (Mr. DEUTSCH) will be recognized for 30 minutes, and the gentleman from Florida (Mr. DIAZ-BALART) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. DEUTSCH).

Mr. DEUTSCH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Central America has been an American foreign policy success story, probably one of the great success stories in this country. We have actively supported or helped take countries from dictatorships to democracies, from conflict to peace, and from closed to opened economies.

But along the way in October a disaster occurred, a disaster which actually I was told today as a factual statement is actually the worst disaster in recorded history in the Western Hemisphere; an incredible historical statement to make, but a factual statement. That is the hurricane that devastated this area, Hurricane Mitch.

The devastation that occurred, the equivalent destruction, had it occurred in the United States of America, would have been 80,000 people dead, 25 million people made homeless. It is hard to conceive of what that would mean on a scale in our country, 25 million people homeless.

The issue of the hurricane was that it was not a localized damage, it was not a localized effect. The hurricane was over Honduras for 6 days. These are just incredible statistics, but accurately, I think, ascertained through AID sources.

In Honduras, 77 percent of the people in Honduras were directly affected by the hurricane, ''directly affected'' defined as either a family member died, was severely injured, was displaced in their home, lost their job, or their crop was lost, 77 percent of a country.

□ 1700

In Nicaragua, that number was 20 percent.

To give you a sense again just of the scope of the destruction, from 1961 to 1998, AID spent a total of $298 million in the western hemisphere for aid in terms of natural disasters. That is from 1961 to 1998, during that entire period of time, a total of $298 million. We have already spent, already expended, $312 million in terms of Hurricane Mitch restoration efforts.

This is a region in the world which truly is our neighbor. It is also a huge trading partner, $18 billion a year in U.S. exports, which is actually more than all of the former Soviet Union and Eastern Europe combined.

This House has passed previously funding, actually $621 million in direct funding for reconstruction assistance. The House I think wisely actually increased this number above the Senate number, and this motion to recommit is to substantiate, to support the House position.

This funding is mostly through, really, AID in terms of projects like schools, health units, bridges, really infrastructure of the countries that were devastated by the storm.

If we do not do this, if we do not do this, what will occur? On a human level, what is already occurring is really the health issues, severe health issues of dysentery. Luckily, we were able to reprogram money, actually $30 million, $30 million of the 50 million additional dollars that this Congress appropriated for world children's health. We appropriated in the last Congress $50 million for children's survival for the entire world. $30 million of that $50 million had wisely been spent to avoid a public health disaster in Central America. But that disaster can still occur.

So on a human level, we really are talking about health issues really in a sense whether we are going to do this or deal with increasing assistance or seeing starvation. But we are also dealing with a planting season which hopefully we will able to do this supplemental and reach the time when the planting season will occur, which is before the start of the summer. So, on a human level, there are incredible human issues that we need to deal with.

But I would say to my colleagues that there are two direct issues. What we have seen previously is that this truly is our neighborhood, and these are our neighbors. Literally, our neighbors have the ability to walk to our homes, and we have seen this occur. If we give no hope to these people, I think what is overdetermined and what we know will happen is we will have another issue to deal with. It is an issue which I do not think this Congress directly wants to face, but it is an issue that will come to us.

On a second level, I think we need to remind ourselves, before the success stories, what was Central America. It was a place, from the changes we discussed, of dictatorships, of conflict, of war, and of closed economies. I can