

**與公元2000年數位法律責任有關的法例：
海外經驗**

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立法會秘書處歡迎轉載這份研究報告的部分或全文，並歡迎將之譯成其他語文。報告所載資料可隨意複製以供非商業用途，但須註明資料出處為立法會秘書處資料研究及圖書館服務部，並將一份複製文本送交立法會圖書館備存。

與公元2000年數位法律責任有關的法例： 海外經驗

第 1 部 —— 何謂與公元 2000 年數位法律責任有關的法例？

1.1 所謂與公元2000年數位法律責任有關的法例，泛指那些因應電腦或相關裝置或系統或程序在處理由1999年過渡至2000年的問題時可能出現故障的情況，為與該等故障相關的損害賠償而訂定提出民事訴訟程序的法例。當前的年份過渡問題，出於過去數十年來，電腦程式一直以兩位數字而非4位數字代表年份，以節省電腦的儲存空間和成本。因此，很多電腦系統、軟件程式，以至置於機器或器材內又載有“程式”指令的半導體或微型處理器(通稱為“內置晶片”)，均無法辨認1999年該年內和1999年12月31日以後的若干日期。這些系統、程式或晶片會將2000年及以後的日期，誤以為代表1900年或以後的日期，甚或根本無法處理這些日期。這些電腦或系統失靈情況會令電腦系統無法運作，而這些電腦系統又往往是市場、工商業、消費產品、公用事業、政府、以至安全及保安系統運作時所不可或缺的。由於電腦系統往往互相連接，界面連接錯綜複雜，因此只要有一個系統發生故障，便會導致其他系統相繼出現問題。可能因2000年數位而出現的問題載於附錄I。

1.2 由於2000年數位問題對社會和經濟事務均有重大影響，因此各界必須在數位問題令重要系統無法運作之前，修改或更換受影響的電腦系統。海外國家已經訂立若干法例，鼓勵各界披露或互通有關電腦處理問題、解決方法、測試方法及結果的資訊。這類法例俗稱為“以助人為本的法案”，因為有關法例旨在鼓勵各界工商機構公開其資料，讓公眾知悉其在2000年數位問題上是否準備就緒，以及有何應變計劃。海外國家通常會先行引入這類法例，然後才引入有關2000年數位法律責任的法例，因為後者會清楚界定有關各方當事人的責任和義務，亦會訂定解決爭端的程序。

1.3 有關2000年數位問題的法律責任可分為3類：

合約： 根據明示的合約條款，如軟件賣方所交付的產品不符合2000年數位標準，便可能產生法律責任。如合約並無任何明示的協議，則賣方仍可能根據合約內的隱含條款而須承擔法律責任，因為根據合約的隱含條款，賣方所提供的貨品必須具有可商售品質，並適合用於該種貨品的擬作用途。而在提供服務方面，隱含合約條款規定，提供者必須以合理程度的謹慎及技術作出服務。

疏忽： 貨品或服務的提供者有責任以合理程度的謹慎，確保所提供貨品或服務不會對用者造成傷害。如貨品或服務的提供者沒有採取這種謹慎態度，便構成疏忽。在有關疏忽的申索中，原告人需要證明，因有人未能採取這種謹慎態度而導致在合理範圍內可以預見的損失或傷害。法院設有既定程序，以評估專業上的法律責任。如果被告人的疏忽導致原告人的身體受傷害或其財產受損壞，有關當事人通常會提出侵權行為訴訟。在有關2000年數位法律責任的問題上，在很多情況下都可能會出現侵權行為訴訟，例如由不符合2000年數位標準的“內置晶片”驅動的醫療儀器或乘客升降機發生故障。

法定規定： 立法機關可以制定法律，規定須達到的某些標準、須依循的某些程序，或規定某些機構及個人須備存妥善紀錄，例如銀行、經紀行、地產代理商、僱主等。在有關2000年數位法律責任的問題上，如未能備存妥善紀錄，有關機構或個人便可能因而違反了法定規定。

1.4 本文件概述美國、英國、澳洲和加拿大為解決2000年數位問題法律責任的立法工作經驗。

第 2 部 —— 美國的立法工作

2. 《公元 2000 年資訊及準備狀態披露法》

2.1 美國國會是全球其中一個率先為處理電腦2000年數位問題而進行立法工作的立法機關。美國國會率先於1998年10月通過《公元2000年資訊及準備狀態披露法》（“以助人為本的法案”）。該法案於1998年10月19日由美國總統簽署成為公法第105-271號。該法旨在鼓勵各界在公元2000年數位問題上，披露及互通有關電腦處理問題、解決方法、測試方法及結果的資訊。該法限制利用已披露的公元2000年資訊向披露者提出民事訴訟，除非涉及有違真誠或欺詐成份。該法又定有短期的反信託豁免條款（至2001年7月14日止），讓那些正在進行修正行動或採取其他行動以避免出現2000年數位問題的個人或機構，可以獲得豁免。《公元2000年資訊及準備狀態披露法》的文本載於附錄II（只備英文本）。該法的立法過程摘要則載於附錄III（只備英文本）。

3. 《公元 2000 年準備狀態及責任法》

3.1 美國國會採取的第二步，也是更重要的一步，就是於1999年7月1日通過一個聯合會報告（聯合會的成員來自眾議院、參議院和白宮），該報告關乎制定一項法案，以訂定就與不符合2000年數位標準有關的損害賠償提出民事訴訟的程序，即H.R.775 —— 《公元2000年準備狀態及責任法》。眾議院和參議院於1999年7月1日通過該聯合會報告。該法案業經核證並已登記在案，即將由美國總統簽署成為法例。美國國會制定這項法案，是因為美國的工商機構為電腦重新編寫程式所導致的開支預計高達500億美元，而與2000年數位問題有關的法律訴訟更可能會涉及超過10000億美元的款項。該法案的文本載於附錄IV（只備英文本），其主要條款撮述如下：

有效期

3.2 該法案適用於2003年1月1日前出現與2000年數位有關的故障問題。換而言之，該法案只是一項一次過的安排，以更改有關合約和侵權行為的訴訟，而且範圍只限於在短短3年內所出現的損害。

合約

3.3 該法案保留現有合約的所有條款。現行的合約法仍然適用。

侵權

3.4 該法案不適用於有關個人受傷或因錯誤導致死亡的申索。

法定規定：有限度的寬免措施

3.5 該法案保留現時所有的法定規定。然而，該法案設定了若干有限度的寬免措施：如有人作出與2000年數位問題有關的違規行為，而有關行為又屬報道或監察性質，該人便可免遭受刑罰。該條款只限作為對刑罰的免責辯護，而有關被告人需要證明兩點：(a)其違規行為是無可避免的，因為當時其面對與不符合2000年數位標準問題直接有關的緊急事故；以及(b)其違規行為是有需要的，因為其必須作出有關行為，才能防止事關重大的功能或服務受到干擾，而這些功能或服務一旦受到干擾，可以導致人命傷亡或財產損失。被告人亦須證明3點：他曾經出於真誠而採取了合理的行動，以預計、防止及有效修正可能出現的2000年數位問題；他已經在作出違規行為的72小時內通知有關的規管機構；他已經在15天內將問題妥為解決。有關的免責辯護條款不適用於在2000年6月30日之後出現的這些違規行為。

保障消費者

3.6 該法案確保業主不得因與2000年數位有關的故障問題而被取消回贖權。這項條款只限於住宅按揭，並且只適用於在1999年12月16日至2000年3月15日期間進行的交易。

損害賠償

3.7 就淨值不超過50萬美元的個人及僱用50名或以下僱員的公司而言，該法案將懲罰性質的損害賠償上限定為25萬美元或補償性質的損害賠償的3倍，以金額較低者為準。作出這項規定，是要防止有人藉此對富有的被告人作出敲詐行為。該法案定有為期90天的寬限期，供被告人在訴訟前將問題解決。該法案又訂定了一條按比例計算法律責任的方程式，以評估有關被告人須承擔多大的責任，換而言之，一間公司在導致產生問題方面須承擔的責任，與其在財務上須承擔的法律責任掛鈎。有關方程式在適用於涉及一些多於一個被告的案件時，即使其中一個被告人破產，其他被告人亦須承擔該被告人的賠償責任，從而對消費者提供充分保障。該法案沿用美國全國現行有關懲罰性質損害賠償的標準，並沒有從新建立一套具凌駕性質的新聯邦標準。該法案並沒有訂定有關政府實體的懲罰性質損害賠償額。

有關集團訴訟的限制

3.8 該法案規定，如要在聯邦法院提出集團訴訟，最少須有100個原告人，以及索償最少1,000萬美元或者旨在索取懲罰性質的損害賠償。

解決爭端的其他代替方法

3.9 該法案鼓勵採用補救行動及以訴訟以外的其他方法來解決爭端。假如被告人在法院就所有由其他人向法院提出的申索作出裁決或判決前解決到有關2000年數位問題的訴訟，而該項訴訟又並不涉及合約，該被告人可獲解除法律責任。

保護根據“以助人為本的法案”而披露2000年數位資料

3.10 該法案確認，根據《公元2000年資訊及準備狀態披露法》(公法第105-271號)對互通資料所給予的保護，適用與任何有關2000年數位的訴訟。

4. 《小型企業公元2000年準備狀態法》(公法第106-8號)

4.1 該法於1999年4月5日制定，俗稱為“小型企業數位法”。該法旨在修訂《小型企業法》，授權小型企業管理局在截至2000年12月31日前的一段期間：(a)為小型企業擔任保證人，讓小型企業向合資格的貸款機構貸款，以處理2000年數位問題，包括維修及購置電腦系統的費用、聘請顧問及有關的開支；以及(b)向那些直接因2000年數位問題而蒙受龐大經濟損失的小型企業發放援助金。該法又訂明貸款金額及行政參與的限額，又規定小型企業管理局須就貸款保證計劃向國會轄下的小型企業委員會提交年報。該法的文本載於附錄V(只備英文本)。

5. 《審核權及財務機構公元2000年準備狀態法》 (公法第105-164號)

5.1 該法處理關乎財務機構的2000年數位問題，將審核權擴展至包括互助儲蓄銀行監管辦事處處長及全國儲蓄互助社管理局。每間聯邦銀行機構及全國儲蓄互助社管理局的董事局均須為其轄下所有存款機構及儲蓄互助社舉辦座談會，向它們講解2000年數位問題的影響。美國總統於1998年3月20日簽署該法案，該法案隨即成為法例。此外，《家居貸款法》及《聯邦儲蓄互助社法》亦予以相應修訂，以便相關的規管機構可以作出審核。立法會圖書館備有該法的文本，亦可在互聯網上的立法會圖書館次網頁內的“研究工作”欄，將法例文本下載。立法會網址為<<http://www.legco.gov.hk/>>。

6. 其他法案

6.1 有關處理2000年數位的多條其他法案已呈交美國國會。部分法案所處理的問題已納入上文所述的H.R.755號法案。在美國國內，有更多由州立法機關制定的法案，處理在州內與2000年數位有關的各個方面的問題。由於時間緊迫，現只將有關的聯邦法案概述如下，方便議員參考。由眾議院首先提出的法案編號以H.R.開始，由參議院首先提出的法案編號以S.開始。

S.962 “小型企業符合2000年數位法案”：這條法案容許小型企業將用於使有關設施符合2000年數位要求的開支，從總收益中扣減，然後才計算利得稅。但這方面的總開支不可超逾4萬美元。這條法案已提交及進行二讀，並在1999年5月5日轉交財政委員會審議。

S.1138 “符合2000年數位法案”：這條法案透過訂定條文，就因與2000年數位有關的設施失靈而或會引致通訊、各類交通運輸工具及其他影響州際商業的事宜所引起的損失作出規定，在這方面對州際商業活動進行規管。這條法案已訂於1999年5月27日由參議院審議。所有建議已納入H.R.775號法案。

H.R.1447 “全國2000年數位測試日法案”：這條法案就若干聯邦及非聯邦電腦系統在2000年數位方面進行經統籌的全面測試，以及披露有關系統是在解決2000年數位問題方面的情況，作出規定。這條法案已在1999年4月22日轉交國會科學委員會轄下科技小組委員會審議。

S.723 “2000年數位有限特赦法案”：這條法案對由於與2000年數位有關的系統失靈而致不能遵守聯邦可執行的規定的被告給予有限特赦作出規定。這條法案於1999年5月25日進行二讀，並轉交政府事務委員會審議。這項特赦稱為“2000年數位特赦”，已納入H.R.775號法案。

S.738/H.R.1319 “2000年數位公平訴訟法案”：這條法案透過提供誘因，鼓勵與訟人解決有關2000年數位並對美國經濟的重要行業可能產生干擾的訴訟，以保證無辜的使用者及工商業機構，可以有途徑獲得解決不能符合2000年數位規定的問題。這條法案已在1999年5月25日進行二讀，並轉交司法委員會審議。已納入H.R.775號法案。

H.R.1022/H.R.909/S.174 “2000年數位州及地方政府援助法案”：這條法案授權商務部長向各州撥款，以糾正用於處理州及地方政府各項計劃的電腦的2000年數位問題。撥款總數共75筆，每州不超過2筆。撥款上限為4,000萬美元，將由已為確保政府符合2000年數位規定而設立的特別基金撥出。這條法案已在1999年3月12日轉交國會政府改革委員會轄下政府管理、資訊及科技小組委員會審議。

H.R.1502 “2000年法案”：這條法案旨在盡量減少2000年數位問題對政府及私營機構運作造成的干擾。法案訂定政府機關須採取的行動，以及對醫療服務及水務提供者的協助。這條法案已在1999年4月27日轉交國會科學委員會轄下科技小組委員會審議。

S.AMDT.621：確保製造商如有修復2000年數位所導致的損壞的方法，必須予以提供。這項議案在1999年6月10日獲參議員通過。

S.RES.7：這項決議案旨在“增加撥款予‘與2000年數位的科技有關的問題的特別委員會’”。有關措施經修訂後已獲參議院通過。序號#29。

6.2 議員如欲知悉關於這些法案在美國國會的最新進展，請在互聯網網址<<http://thomas.loc.gov/>>“Bill Status”搜尋“Y2K”。

第 3 部 —— 英國的立法工作

7.1 《電腦不符合千位數字標準(應變計劃)條例草案》於1999年2月2日提交下議院。該條例草案旨在規定，所有提供重要公共服務及管理重大基建的機構，均須擬定應變計劃、將應變計劃及負責人姓名通知適當的有關當局，以及在有人提出要求時出示有關資料。有關條例草案的文本載於附錄VI(只備英文本)。該條例草案已獲列入議事程序表內，將於1999年7月23日進行二讀。

7.2 這項條例草案是國會議員艾紀燊(David ATKINSON)就這個問題而嘗試提交的第3項條例草案。艾紀燊最初於1996年11月提交《公司(電腦符合千年數位標準)條例草案》。該條例草案向每家公司施加一項法定責任，規定它們必須評估其電腦系統是否符合2000年數位標準，並須在公司向股東發表的報告中披露評估結果。由於在提交條例草案方面遇到議事程序上的障礙，以致該條例草案最後胎死腹中。艾紀燊擬提交的第2項條例草案，則旨在規定任何與製造或售賣電腦系統有關的公司均須符合2000年數位標準。該條例草案於1998年3月31日進行首讀，但他隨後並未再就該條例草案採取進一步的行動。

7.3 有關這項條例草案的最新情況，可在互聯網瀏覽相關的網頁，網址為<<http://www.parliament.uk/>>。

第 4 部 —— 澳洲的立法工作

8.1 澳洲於1999年2月26日制定《1999年的公元2000年資料披露法》。該法旨在訂定法律架構，規管自願披露及互通有關電腦2000年數位問題的資料及相關的補救方法。該法案保障作出有關2000年數位問題聲明的人無須承擔民事法律責任，除非涉及例外情況。該法所規定的例外情況包括：虛假聲明、在締結合約前作出的聲明，或為履行義務或誘使消費者購買貨品或服務而作出的聲明。具體而言，除非締約各方同意，否則披露2000年數位資料的聲明不得修改任何合約條款。立法會圖書館備有該法的文本，亦可在互聯網上的立法會圖書館次網頁內的“研究工作”欄，將法例文本下載。立法會網址為<<http://www.legco.gov.hk/>>。

8.2 就澳洲國會截至現時的討論過程而言，並無跡象顯示澳洲國會打算就2000年數位的法律責任問題制定另一項法案。有關澳洲的立法工作的最新情況，可在互聯網瀏覽相關的網頁，網址為<<http://www.aph.gov.au/>>。

第 5 部 —— 加拿大的立法工作

9.1 加拿大並無就2000年電腦數位問題制定任何法例。加拿大國會轄下的工業常務委員會於1998年5月14日向眾議院提交第6份報告，題為“公元2000年數位問題 —— 加拿大的當前情況”。該委員會在報告中建議“當局應提交修訂法案，把確保電腦系統符合2000年數位標準，明確列為在聯邦註冊的工商機構的董事所必須承擔的一項責任。”加拿大政府於1999年2月對這項建議作出回應，現將其撮述如下：

“現行有關機構管理的法例已經規定，董事有責任管理其轄下公司的業務及事務，以令公司獲得最大得益為依歸，並須謹慎行事、克盡厥職、技巧熟練，達到一個謹言慎行的人在類同情況下應有的表現。律政署表示，這項職責已規定董事須考慮各項重大事項，例如公元2000年數位問題。”²

9.2 工業常務委員會在第6份報告中亦建議，“當局應提交修訂法案，讓那些出於助人精神而免費提供解決2000年數位問題方法的商號，無須承擔法律責任。”加拿大政府的回應撮述如下：

“政府認同常務委員會所提建議的目標。就一般情況而言，有關民事法律責任的事項屬各省和地區本身的立法機關所管轄權範圍。政府會將常務委員會的建議轉達各省政府及地區政府。”³

不過，本部未能找到在加拿大各省訂立的相關法例。

9.3 此外，加拿大國會轄下的工業常務委員會亦在上文曾經提及的第6份報告中建議，如中小型企業購買全新的電腦以取代不符合2000年數位標準的電腦，當局應為這些企業提供全面的稅項寬減。加拿大政府接納這項建議，准許加拿大的中小型企業購買不超過5萬加元的電腦硬件、軟件或有關資訊科技的物品，獲100%的資本費用免稅額。申報免稅額的有效期可追溯至1998年1月1日，有效期至1999年6月30日止，後來再延長至1999年10月31日。

9.4 一名加拿大國會議員曾經要求加拿大政府考慮定下一個日期，規定所有電腦硬件和軟件裝置必須在該日完全符合2000年數位標準，並認為應把該日期納入《加拿大標準法》內。加拿大政府認為，上述寬減稅項措施已經足以確保各電腦硬件及軟件均符合2000年數位標準。⁴此外，加拿大政府將1999年2月8日至13日的一個星期定為“全國為公元2000年作出準備週”。在這個星期內，加拿大全國各地的每家每戶均獲派發有關2000年問題的指引，載有關乎家居用具、汽車、保險、個人財務安排和電腦的資料。

9.5 有關加拿大的立法工作的最新情況，可在互聯網瀏覽相關的網頁，網址為<<http://www.parl.gc.ca/>>。

附註：

1. 簡略而言，英國國會通過法案的程序如下：

首獨---二讀---委員會審議階段---提交報告階段---
三讀---提交上議院通過---獲英女皇簽署同意
2. 請參閱工業常務委員會，於1999年2月8日提交眾議院省覽的“公元2000年數位問題 —— 加拿大的準備狀態”，第13份報告(臨時報告)內附錄A所載的政府就建議二所作的回應。
3. 請參閱工業常務委員會，於1999年2月8日提交眾議院省覽的“公元2000年數位問題 —— 加拿大的準備狀態”，第13份報告(臨時報告)內附錄A所載的政府就建議六所作的回應。
4. Mr Jim JONES，請參閱加拿大國會議事錄第121號。會議日期為1998年6月12日，時間為11時50分。

附錄I

可能因2000年數位而出現的問題

A. 可能與2000年數位有關的日期

1999年4月9日(9/4/99)	99年第99日(在部分電腦程式中，99及9999數字用作文件結束的標記；因此那些程式可能會在該日之後立即失效。
1999年8月21日至 1999年8月22日	衛星導航全球定位系統延續日
1999年12月31日及 2000年1月1日	新千禧年延續日
2000年2月29日	部分電腦程式可能不懂辨認00年(用作表示2000年)為潤年，因而不能辨認該日為潤年日

B. 可能與2000年數位有關的方面

自動警報系統
自動消防系統
自動照明系統
自動灑水系統
電腦
收銀機
電腦網絡
電腦化進出管制設施，包括大廈入口、停車場入口、乘客升降機
電腦化醫療器材
電腦化薪金計算系統
電腦化生產設備或機械
電腦化交易登記，例如貨物及服務貿易，包括股票交易、發出或處理車票、船票或飛機票、現金轉帳或信用咭付款、房地產買賣等
電腦化錄音或錄影，例如可預校程序閉路電視錄影機、錄影機等
日期登記設施
圖文傳真機
夾萬及時間鎖
電話、流動電話及電話總機
時鐘
時間記錄儀器，如上班記時的機器
自動售貨機

--S.2392--

附錄II

S.2392

One Hundred Fifth Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday,

the twenty-seventh day of January, one thousand nine hundred and ninety-eight

An Act

To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.

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 Information and Readiness Disclosure Act'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds the following:

(1) (A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors 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.

(B) The problem described in subparagraph (A) and 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.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services-

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(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation's economic well-being and security.

(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

(b) **PURPOSES-** Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are--

(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ANTITRUST LAWS-** The term `antitrust laws'--

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph (A).

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(2) CONSUMER- The term `consumer' means an individual who acquires a consumer product for purposes other than resale.

(3) CONSUMER PRODUCT- The term `consumer product' means any personal property or service which is normally used for personal, family, or household purposes.

(4) COVERED ACTION- The term `covered action' means civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) MAKER- The term `maker' means each person or entity, including the United States or a State or political subdivision thereof, that--

(A) issues or publishes any year 2000 statement;

(B) develops or prepares any year 2000 statement; or

(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

(6) REPUBLICATION- The term `republishing' means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) YEAR 2000 INTERNET WEBSITE- The term `year 2000 Internet website' means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) YEAR 2000 PROCESSING- The term `year 2000 processing' means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) YEAR 2000 READINESS DISCLOSURE- The term `year 2000 readiness disclosure' means any written year 2000 statement--

(A) clearly identified on its face as a year 2000 readiness disclosure;

(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

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(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

(10) YEAR 2000 REMEDIATION PRODUCT OR SERVICE- The term 'year 2000 remediation product or service' means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

(11) YEAR 2000 STATEMENT-

(A) IN GENERAL- The term 'year 2000 statement' means any communication or other conveyance of information by a party to another or to the public, in any form or medium--

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or set of products and services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by--

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) NOT INCLUDED- For the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term year 2000 statement does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

附錄II (續)

SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) EVIDENCE EXCLUSION- No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that--

(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker's use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

(b) FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS- Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that--

(1) the year 2000 statement was material; and

(2)(A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement--

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication that the maker of the republication made the year 2000 statement--

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that--

(I) the maker has not verified the contents of the republication; or

附錄II (續)

(II) the maker is not the source of the republication and the republication is based on information supplied by another person or entity identified in that year 2000 statement or republication.

(c) DEFAMATION OR SIMILAR CLAIMS- In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE-

(1) IN GENERAL- Except as provided in paragraph (2), in any covered action, other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed an adequate mechanism for providing that notice.

(2) EXCEPTION- Paragraph (1) shall not apply if the court finds that the use of the mechanism of notice--

(A) is contrary to express prior representations regarding the mechanism of notice made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice, no regular course of dealing exists between the parties, and actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION- Nothing in this subsection shall--

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

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(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS-

(1) IN GENERAL- In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE-

(A) IN GENERAL- This subsection shall not apply--

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

(B) RULE OF CONSTRUCTION- Nothing in this subsection shall affect applicable Federal or State law in effect as of the date of enactment of this Act with respect to determining the extent to which a year 2000 statement affects a contract or warranty.

(f) SPECIAL DATA GATHERING-

(1) IN GENERAL- A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

(2) SPECIFICS- A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority, or, with its consent, another public or private entity, agency, or authority, to gather responses to the request.

(3) PROTECTIONS- Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such other information provided by a party in response to a special year 2000 data gathering request made under this subsection--

(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the 'Freedom of Information Act';

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(B) shall not be disclosed to any third party; and

(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

(4) EXCEPTIONS-

(A) INFORMATION OBTAINED ELSEWHERE- Nothing in this subsection shall preclude a Federal entity, agency, or authority, or any third party, from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) VOLUNTARY DISCLOSURE- A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to a special year 2000 data gathering request or disclosed by such party separately from a response to a special year 2000 data gathering request.

SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

(a) EXEMPTION- Except as provided in subsection (b), the antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to--

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure

(b) APPLICABILITY- Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) EXCEPTION TO EXEMPTION- Subsection (a) shall not apply with respect to conduct that involves or results in an agreement to boycott any person, to allocate a market or fix prices or output.

(d) RULE OF CONSTRUCTION- The exemption granted by this section shall be construed narrowly.

附錄II (續)

SEC. 6. EXCLUSIONS.

(a) EFFECT ON INFORMATION DISCLOSURE- This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) CONTRACTS AND OTHER CLAIMS-

(1) IN GENERAL- Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person or entity, under any Federal or State law.

(2) OTHER CLAIMS-

(A) IN GENERAL- In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(B) SPECIFIC NOTICE REQUIRED- In any covered action, this Act shall not apply to a year 2000 statement, concerning a year 2000 remediation product or service, expressly made in an offer to sell or in a solicitation (including an advertisement) by a seller, manufacturer, or provider, of that product or service unless, during the course of the offer or solicitation, the party making the offer or solicitation provides the following notice in accordance with section 4(d):

'Statements made to you in the course of this sale are subject to the Year 2000 Information and Readiness Disclosure Act (XX U.S.C. XX). In the case of a dispute, this Act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff.'

(3) RULE OF CONSTRUCTION- Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) DUTY OR STANDARD OF CARE-

(1) IN GENERAL- This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) ADDITIONAL DISCLOSURE- This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

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(3) DUTY OF CARE- This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) INTELLECTUAL PROPERTY RIGHTS- This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

(e) INJUNCTIVE RELIEF- Nothing in this Act shall be deemed to preclude a claimant from seeking injunctive relief with respect to a year 2000 statement.

SEC. 7. APPLICABILITY.

(a) EFFECTIVE DATE-

(1) IN GENERAL- Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act.

(2) APPLICATION TO LAWSUITS PENDING- This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

(3) APPLICATION TO STATEMENTS AND DISCLOSURES- Except as provided in subsection (b)--

(A) this Act shall apply to any year 2000 statement made beginning on July 14, 1998 and ending on July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness disclosure made beginning on the date of enactment of this Act and ending on July 14, 2001.

(b) PREVIOUSLY MADE READINESS DISCLOSURE-

(1) IN GENERAL- For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act, may designate that year 2000 statement as a year 2000 readiness disclosure if--

(A) the year 2000 statement complied with the requirements of section 3(9) when made, other than being clearly designated on its face as a disclosure; and

(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation--

(i) provides individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; or

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(ii) prominently posts notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also by using the same method of notification used to originally provide the applicable year 2000 statement.

(2) REQUIREMENTS- A notice under paragraph (1)(B) shall--

(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend labeling the statement as a 'Year 2000 Readiness Disclosure'.

(c) EXCEPTION- No designation of a year 2000 statement as a year 2000 readiness disclosure under subsection (b) shall apply with respect to any person or entity that--

(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice described in subsection (b) (1) (B) and it would be prejudiced by the retroactive designation of the year 2000 statement as a year 2000 readiness disclosure; and

(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(1)(B)(i), or within 180 days after the date of enactment of this Act, in the case of notice provided under subsection (b)(1)(B)(ii).

SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.

(a) IN GENERAL-

(1) WORKING GROUPS- The President's Year 2000 Council (referred to in this section as the 'Council') may establish and terminate working groups composed of Federal employees who will engage outside organizations in discussions to address the year 2000 problems identified in section 2(a)(1) to share information related to year 2000 readiness, and otherwise to serve the purposes of this Act.

(2) LIST OF GROUPS- The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

(3) BALANCE- The Council shall seek to achieve a balance of participation and representation among the working groups.

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(4) ATTENDANCE- The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

(5) MEETINGS- Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

(b) FACCA- The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

(c) PRIVATE RIGHT OF ACTION- This section creates no private right of action to sue for enforcement of the provisions of this section.

(d) EXPIRATION- The authority conferred by this section shall expire on December 31, 2000.

SEC. 9. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

(a) NATIONAL WEBSITE-

(1) IN GENERAL- The Administrator of General Services shall create and maintain until July 14, 2002, a national year 2000 website, and promote its availability, designed to assist consumers, small business, and local governments in obtaining information from other governmental websites, hotlines, or information clearinghouses about year 2000 processing of computers, systems, products and services, including websites maintained by independent agencies and other departments.

(2) CONSULTATION- In creating the national year 2000 website, the Administrator of General Services shall consult with--

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;

(C) the Consumer Product Safety Commission;

(D) officials of State and local governments;

(E) the Director of the National Institute of Standards and Technology;

(F) representatives of consumer and industry groups; and

(G) representatives of other entities, as determined appropriate.

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(b) REPORT- The Administrator of General Services shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives not later than 60 days after the date of enactment of this Act regarding planning to comply with the requirements of this section.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

附錄III

**A SUMMARY OF LEGISLATIVE STATUS OF
THE YEAR 2000 INFORMATION AND
READINESS DISCLOSURE ACT, U.S. PUBLIC LAW 105-271**

Date	Floor Actions
19 Oct 1998	Public Law 105-271
8 Oct 1998	Measure presented to President
8 Oct 1998	Enrolled Measure signed in Senate
8 Oct 1998	Enrolled Measure signed in House
1 Oct 1998	Measure passed House
1 Oct 1998	Measure considered in House
1 Oct 1998	Measure called up by unanimous consent in House
28 Sep 1998	Measure passed Senate, amended
28 Sep 1998	Measure considered in Senate
28 Sep 1998	Measure called up by unanimous consent in Senate
17 Sep 1998	Reported to Senate from the Committee on the Judiciary, amended

--H.R. 775--

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H.R. 775

One Hundred Sixth Congress

of the

United States of America

AT THE FRIST SESSION

Begun and held at the City of Washington on Wednesday,

the sixth day of January, one thousand nine hundred and ninety-nine

An Act

To establish certain procedures for civil actions brought for damage relating to the failure of any device or system to process or otherwise deal with transition from the year 1999 to the year 2000, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) SHORT TITLE- This Act may be cited as the `Y2K Act'.

(b) TABLE OF CONTENTS- The table of sections for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

Sec. 4. Application of Act.

Sec. 5. Punitive damage limitations.

Sec. 6. Proportionate liability.

Sec. 7. Prelitigation notice.

Sec. 8. Pleading requirements.

Sec. 9. Duty to mitigate.

Sec. 10. Application of existing impossibility or commercial impracticability doctrines.

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- Sec. 11. Damages limitation by contract.
- Sec. 12. Damages in tort claims.
- Sec. 13. State of mind; bystander liability; control.
- Sec. 14. Appointment of special masters or magistrate judges for Y2K actions.
- Sec. 15. Y2K actions as class actions.
- Sec. 16. Applicability of State law.
- Sec. 17. Admissible evidence ultimate issue in State courts.
- Sec. 18. Suspension of penalties for certain year 2000 failures by small business concerns.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- The Congress finds the following:

(1)(A) 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 after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and 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.

(2) 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.

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

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

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

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

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

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

(4) It is appropriate for Congress to enact legislation to assure that the year 2000 problems described in this section do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help business prepare and be in a position to withstand the potentially devastating economic impact of such problems.

(5) Resorting to the legal system for resolution of year 2000 problems described in this section is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) Concern about the potential for liability -- in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits--is prompting many persons and business with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(7) A proliferation of frivolous lawsuits relating to year 2000 computer date-change problems 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) Congress encourage businesses to approach their disputes relating to year 2000 computer date-change problems responsibly, and to avoid unnecessary, time-consuming, and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is such a dispute, and, if necessary, urges the parties to enter into voluntary, nonbinding mediation rather than litigation.

(b) PURPOSES- Based upon the power of the Congress under 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;

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(2) to encourage continued remediation and testing efforts to solve such problems by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve disputes relating to year 2000 computer date-change problems by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of such problems; and

(4) 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.

SEC. 3. DEFINITIONS.

In this Act:

(1) Y2K ACTION- The term `Y2K action'--

(A) means a civil action commenced in any Federal or State court, or any agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury arises from or is related to an actual or potential Y2K failure; or a claim or defense arises from or is related to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a government entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a government entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K FAILURE- The term `Y2K failure' means 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 to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures--

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

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(3) GOVERNMENT ENTITY- The term 'government entity' means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) 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 according to its specifications. The term 'material defect' does not include a defect that--

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) PERSONAL INJURY- The term 'personal injury' means physical injury to a natural person, including--

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) 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.

(7) CONTRACT- The term 'contract' means a contract, tariff, license, or warranty.

(8) 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.

SEC. 4. APPLICATION OF ACT.

(a) GENERAL RULE- This Act applies to any Y2K action brought after January 1, 1999, for a Y2K failure occurring before January 1, 2003, or for a potential Y2K failure that could occur or has allegedly caused harm or injury before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

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(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) CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH EXCLUDED- This Act does not apply to a claim for personal injury or for wrongful death.

(d) Warranty and Contract Preservation-

(1) IN GENERAL- Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly 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.

(2) INTERPRETATION OF CONTRACT- In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(3) UNCONSCIONABILITY- Nothing in paragraph(1) shall prevent enforcement of State law doctrines of unconscionability, including adhesion, recognized as of January 1, 1999, in controlling judicial precedent by the courts of the State whose law applies to the Y2K action.

(e) PREEMPTION OF STATE LAW- This Act supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this Act implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

(f) APPLICATION WITH YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT - Nothing in this Act supersedes any provision of the Year 2000 Information and Readiness Disclosure Act.

(g) APPLICATION TO ACTIONS BROUGHT BY A GOVERNMENT ENTITY-

(1) IN GENERAL- To the extent provided in this subsection, this Act shall apply to an action brought by a government entity described in section 3 (1) (C).

(2) DEFINITIONS- In this subsection:

(A) DEFENDANT-

(i) IN GENERAL- The term 'defendant' includes a State or local government.

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(ii) STATE- The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(iii) LOCAL GOVERNMENT- The term 'local government' means--

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in subclause (I) recognized by the Secretary of Housing and Urban Development.

(B) Y2K UPSET- The term 'Y2K upset'--

(i) means an exceptional temporary noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements directly related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include--

(I) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirement that provide for the safety and soundness of the banking or monetary system, or for the integrity of the national securities markets, including the protection of depositors and investors;

(III) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements to the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance;

(V) lack of preparedness for a Y2K failure; or

(VI) noncompliance with the underlying federally enforceable requirements to which the applicable federally enforceable measurement, monitoring, or reporting requirement relates.

(3) CONDITIONS NECESSARY FOR A DEMONSTRATION OF A Y2K UPSET-A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that --

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- (A) the defendant previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;
- (B) a Y2K upset occurred as a result of a Y2K failure or other emergency directly related to a Y2K failure;
- (C) noncompliance with the applicable federally enforceable measurement, monitoring, or reporting requirement was unavoidable in the face of an emergency directly related to a Y2K failure and was necessary to prevent the disruption of critical functions or services that could result in harm to life or property;
- (D) upon identification of noncompliance the defendant invoking the defense began immediate actions to correct any violation of federally enforceable measurement, monitoring, or reporting requirements; and
- (E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that the defendant became aware of the upset.
- (4) GRANT OF A Y2K UPSET DEFENSE- Subject to the other provisions of this subsection, the Y2K upset defense shall be a complete defense to the imposition of a penalty in any action brought as a result of noncompliance with federally enforceable measurement, monitoring, or reporting requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph(3) are met.
- (5) LENGTH OF Y2K UPSET- The maximum allowable length of the Y2Kupset shall be not more than 15 days beginning on the date of the upset unless specific relief by the appropriate regulatory authority is granted.
- (6) FRAUDULENT INVOCATION OF Y2K UPSET DEFENSE- Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to the sanctions provided in section 1001 of title 18, United States Code.
- (7) EXPIRATION OF DEFENSE -The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.
- (8) PRESERVATION OF AUTHORITY- Nothing in this subsection shall affected the authority of a government entity to seek injunctive relief or require a defendant to correct a violation of a federally enforceable measurement, monitoring, or reporting requirement.
- (h) CONSUMER PROTECTON FROM Y2K FAILURES-
- (1) IN GENERAL- No person who transacts business on matters directly or indirectly affecting residential mortgages shall cause or permit a foreclosure on any such mortgage against a consumer as a result of an actual Y2K failure that results in an inability to accurately or timely process any mortgage payment transaction.

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(2) NOTICE - A consumer who is affected by an inability described in paragraph (1) shall notify the servicer for the mortgage, in writing and within 7 business days from the time that the consumer becomes aware of the Y2K failure and the consumer's inability to accurately or timely fulfill his or her obligation to pay, of such failure and inability and shall provide to the servicer any available documentation with respect to the failure.

(3) ACTIONS MAY RESUME AFTER GRACE PERIOD- Notwithstanding paragraph (1), an action prohibited under paragraph (1) may be resumed, if the consumer's mortgage obligation has not been paid and the servicer of the mortgage has not expressly and in writing granted the consumer an extension of time during which to pay the consumer's mortgage obligation, but only after the later of --

(A) four weeks after January 1, 2000; or

(B) four weeks after notification is made as required under paragraph (2), except that any notification made on or after March 15, 2000, shall not be effective for purposes of this subsection.

(4) APPLICABILITY- This subsection does not apply to transactions upon which a default has occurred before December 15, 1999, or with respect to which an imminent default was foreseeable before December 15., 1999.

(5) ENFORCEMENT OF OBLIGATIONS MERELY TOLLED- This subsection delays but does not prevent the enforcement of financial obligations, and does not otherwise affect or extinguish the obligation to pay.

(6) DEFINITION- In this subsection--

(A) The term 'consumer' means a natural person.

(B) The term 'residential mortgage' has the meaning given the term 'federally related mortgage loan under section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.2602).

(C) The term 'servicer' means the person, including any successor, responsible for receiving any scheduled periodic payments from a consumer pursuant to the terms of a residential mortgage, including amounts for any escrow account, and for making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage. Such term includes the person, including any successor, who makes or holds a loan is such person also services the load.

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(i) **APPLICABILITY TO SECURITIES LITIGATION**- In any Y2K action in which the underlying claim arises under the securities laws (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), the provisions of this Act, other than section 13(b) of this Act, shall not apply.

SEC. 5. PUNITIVE DAMAGES LIMITATIONS.

(a) **IN GENERAL**- In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) **Caps on Punitive Damages**-

(1) **IN GENERAL**- Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of--

(A) three times the amount awarded for compensatory damages; or

(B) \$250,000.

(2) **DEFENDANT DESCRIBED**- A defendant described in this paragraph is a defendant--

(A) who--

(i) is sued in his or her capacity as an individual; and

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

(B) that is an unincorporated business, a partnership, corporation, association, or organization with fewer than 50 full-time employees.

(3) **NO CAP IF INJURY SPECIFICALLY INTENDED**- Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) **GOVERNMENT ENTITIES**- Punitive damages in a Y2K action may not be awarded against a government entity.

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SEC. 6. PROPORTIONATE LIABILITY.

(a) IN GENERAL- Except in a Y2K action that is a contract action, and except as provided in subsections (b) and (g), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of a judgment that corresponds to the relative and proportionate responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) PROPORTIONATE LIABILITY-

(1) DETERMINATION OF RESPONSIBILITY- In any Y2K action that is not a contract action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning--

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)--

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

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

(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 found to have caused or contributed to the loss incurred by the plaintiff; and

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

(c) Joint Liability for Specific Intent or Fraud-

(1) IN GENERAL- Notwithstanding subsection (a), the liability of a defendant in a Y2K action that is not a contract action is joint and several if the trier of fact specifically determines that the defendant--

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(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) Fraud; recklessness-

(A) KNOWING COMMISSION OF FRAUD DESCRIBED- For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant--

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) 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

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) RECKLESSNESS- For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) RIGHT TO CONTRIBUTION NOT AFFECTED- Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) SPECIAL RULES-

(1) UNCOLLECTIBLE SHARE-

(A) IN GENERAL- Notwithstanding subsection (a), if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action that is not a contract action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(A) PERCENTAGE OF NET WORTH- The other defendants are jointly and severally liable for any uncollectible share if the plaintiff establishes that--

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

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(II) the net worth of the plaintiff is less than \$200,000.

(ii) OTHER PLAINTIFFS- For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant.

(iii) For a plaintiff not described in clause (i), in addition to the share identified in clause (ii), the defendant is liable for an additional portion of the uncollectible share in an amount equal to 50 percent of the amount determined under clause (ii) if the plaintiff demonstrates by a preponderance of the evidence that the defendant acted with reckless disregard for the likelihood that its acts would cause injury of the sort suffered by the plaintiff.

(B) OVERALL LIMIT- The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) SUBJECT TO CONTRIBUTION- A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(D) SUITS BY CONSUMERS-

(i) Notwithstanding subparagraph (A), the other defendants are jointly and severally liable for the uncollectible share if--

(I) the plaintiff is a consumer whose suit alleges or arises out of a defect in a consumer product; and

(II) the plaintiff is suing as an individual and not as part of a class action.

(ii) In this subparagraph:

(I) The term 'class action' means--

(aa) a single lawsuit in which: (1) damages are sought on behalf of more than 10 persons or prospective class members; or (2) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

(bb) any group of lawsuits filed in or pending in the same court in which: (1) damages are sought on behalf of more than 10 persons; and (2) the lawsuits are jointed, consolidate, or otherwise proceed as a single action for any purpose.

(II) The term 'consumer' means an individual who acquires a consumer product for purposes other than resale.

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(III) The term 'consumer product' means any personal property or service which is normally use for personal, family, or household purposes.

(2) SPECIAL RIGHT OF CONTRIBUTION- To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution--

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) NONDISCLOSURE TO JURY- The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) SETTLEMENT DISCHARGE-

(1) IN GENERAL- A defendant who settles a Y2K action that is not a contract action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter an order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action--

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) REDUCTION- If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of--

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

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(f) GENERAL RIGHT OF CONTRIBUTION-

(1) IN GENERAL- A defendant who is jointly and severally liable for damages in any Y2K action that is not a contract action may recover contribution 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 contribution is made.

(2) STATUTE OF LIMITATIONS FOR CONTRIBUTION- An action for contribution in connection with a Y2K action that is not a contract action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except than an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) MORE PROTECTIVE STATE LAW NOT PREEMPTED- Nothing in this section preempts or supersedes any provision of State law that--

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

SEC. 7. PRELITIGATION NOTICE.

(a) IN GENERAL- Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff in a Y2K action shall send a written notice by certified mail (with either return receipt requested or other means of verification that the notice was sent) to each prospective defendant in that action. The notice shall provide specific and detailed information about--

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

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

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

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

(b) PERSON TO WHOM NOTICE TO BE SENT- The notice required by subsection (a) shall be sent--

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(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer if the prospective defendant is a corporation, to the managing partner if the prospective defendant is a partnership, to the proprietor if the prospective defendant is a sole proprietorship, or to a similarly-situated person if the prospective defendant is any other enterprise; or

(3) if the prospective defendant has designated a person to receive prelitigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) Response to Notice-

(1) IN GENERAL- Within 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 the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) WILLINGNESS TO ENGAGE IN ADR- The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) INADMISSABILITY- 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.

(4) 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.

(5) PRIORITY - A prospective defendant receiving more than one notice under this section may give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

(d) FAILURE TO RESPOND- If a prospective defendant--

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

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(e) REMEDIATION PERIOD-

(1) IN GENERAL- If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action or alternative dispute resolution before commencing a legal action against that prospective defendant.

(2) EXTENSION BY AGREEMENT- The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) MULTIPLE EXTENSIONS NOT ALLOWED- Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) STATUTES OF LIMITATION, ETC., TOLLED- Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) FAILURE TO PROVIDE NOTICE- If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), 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 plaintiff. If any defendant elects to treat the complaint as such a notice--

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

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

(g) EFFECT OF CONTRACTUAL OR STATUTORY 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 by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) STATE LAW CONTROLS ALTERNATIVE METHODS- Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) PROVISIONAL REMEDIES UNAFFECTED- Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

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(j) SPECIAL RULE FOR CLASS ACTIONS- For the purpose of applying this section to a Y2K 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. 8. PLEADING REQUIREMENTS.

(a) APPLICATION WITH RULES OF CIVIL PROCEDURE- This section applies exclusively to Y2K actions 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- In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) MATERIAL DEFECTS- In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) REQUIRED STATE OF MIND- In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

SEC. 9. DUTY TO MITIGATE.

(a) IN GENERAL - Damages awarded in any Y2K action 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 Y2K failure involved in the action.

(b) PRESERVATION OF EXISTING LAW - The duty imposed by this section is in addition to any duty to mitigate imposed by State Law.

(c) EXCEPTION FOR INTERNATIONAL FRAUD - Subsection (a) does not apply to damages suffered by reason of the plaintiff's justifiable reliance upon an affirmative material misrepresentation by the defendant, made by the defendant with actual knowledge of its falsity, concerning the potential for Y2K failure of the device or system used or sold by the defendant that experienced the Y2k failure alleged to have caused the plaintiff's harm.

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**SEC. 10. APPLICATION OF EXISTING IMPOSSIBILITY OR
COMMERCIAL IMPRACTICABILITY DOCTRINES.**

In any Y2K action 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.

SEC. 11. DAMAGES LIMITATION BY CONTRACT.

In any Y2K action for breach or repudiation of contract, no party may claim, or be awarded, any category of damages unless such damages are allowed--

- (1) by the express terms of the contract; or
- (2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

SEC. 12. DAMAGES IN TORT CLAIMS.

(a) IN GENERAL- A party to a Y2K action making a tort claim, other than a claim of intentional tort arising independent of a contract, may not recover damages for economic loss unless--

- (1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or
- (2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure involved in the action (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable Federal or State law.

(b) ECONOMIC LOSS- For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term `economic loss' means amounts awarded to compensate an injured party for any loss, and includes amounts awarded for damages such as--

- (1) lost profits or sales;
- (2) business interruption;
- (3) losses indirectly suffered as a result of the defendant's wrongful act or omission;

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- (4) losses that arise because of the claims of third parties;
- (5) losses that must be pled as special damages; and
- (6) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) CERTAIN OTHER ACTIONS- A person liable for damages, whether by settlement or judgment, in a civil action to which this Act does not apply because of section 4(c) whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this Act, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

SEC. 13. STATE OF MIND; BYSTANDER LIABILITY; CONTROL.

(a) DEFENDANT'S STATE OF MIND- In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by the standard of evidence under applicable State law in effect on the day before January 1, 1999.

(b) LIMITATION ON BYSTANDER LIABILITY FOR Y2K FAILURES-

(1) IN GENERAL- With respect to any Y2K action for money damages in which-

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K 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 the standard of evidence under applicable State law in effect on the day before January 1, 1999, that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) SUBSTANTIAL PRIVITY- For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action 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.

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(3) CERTAIN CLAIMS EXCLUDED- For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K 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.

(c) CONTROL NOT DETERMINATIVE OF LIABILITY- The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

(d) PROTECTIONS OF THE YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT APPLY- The protections for the exchanges of information provided by section 4 of the Year 2000 Information and Readiness Disclosure Act (Public Law 105-271) shall apply to any Y2K action.

**SEC. 14. APPOINTMENT OF SPECIAL MASTERS OR
MAGISTRATE JUDGES FOR Y2K ACTIONS.**

Any district court of the United States in which a Y2K action is pending may appoint a special master or a magistrate judge to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

SEC. 15. Y2K ACTIONS AS CLASS ACTIONS.

(a) MATERIAL DEFECT REQUIREMENT- A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if--

- (1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and
- (2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) NOTIFICATION- In any Y2K 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, which shall include--

- (1) a concise and clear description of the nature of the action;
- (2) the jurisdiction where the case is pending; and

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(3) 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.

(c) Forum for Y2K Class Actions-

(1) JURISDICTION- Except as provided in paragraph (2), the district courts of the United States shall have original jurisdiction of any Y2K action that is brought as a class action.

(2) EXCEPTION- A Y2K action may not be brought or removed as a class action under this section if--

(A)(i) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(ii) the primary defendants are citizens of that State; and

(iii) the claims asserted will be governed primarily by the law of that State;

(B) the primary defendants are States, State officials, or other governmental entities against whom the district courts of the United States District Court may be foreclosed from ordering relief.

(C) the plaintiff class does not seek an award of punitive damages, and the amount in controversy is less than the sum of \$10,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action; or

(D) there are less than 100 members of the proposed plaintiff class.

A party urging that any exception described in subparagraph (A), (B), (C), or (D) applied to an action shall bear the full burden of demonstrating the applicability of the exception.

(3) PROCEDURE IF REQUIREMENTS NOT MET-

(A) DISMISSAL OR REMAND - A United States district court shall dismiss, or, if after removal, strike the class allegations and remand, any Y2K action brought or removed under this subsection as a class action if--

(i) the action is subject to the jurisdiction of the court solely under this subsection; and

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(ii) the court determines the action may not proceed as a class action based on a failure to satisfy the conditions of Rule 23 of the Federal Rules of Civil Procedure.

(B) AMENDMENT; REMOVAL - Nothing in paragraph (A) shall prohibit plaintiffs from filing an amended class action in Federal or State court. A defendant shall have the right to remove such an amended class action to a United States district court under this subsection.

(C) PERIOD OF LIMITATIONS TOLLED - Upon dismissal or remand, the period of limitations for any claim that was asserted in an action on behalf of any named or unnamed member of any proposed class shall be deemed tolled to the full extent provided under Federal law.

(D) DISMISSAL WITHOUT PREJUDICE - The dismissal of a Y2K action under subparagraph (A) shall be without prejudice.

(d) EFFECT ON RULES OF CIVIL PROCEDURE- Except as otherwise provided in this section, nothing in this section supersedes any rule of Federal or State civil procedure applicable to class actions.

SEC. 16. APPLICABILITY OF STATE LAW.

Nothing in this Act shall be construed to affect the applicability of any State law that provides stricter limits on damages and liabilities, affording greater protection to defendants in Y2K actions, than are provided in this Act.

SEC. 17. ADMISSIBLE EVIDENCE ULTIMATE ISSUE IN STATE COURTS.

Any party to a Y2K action in a State court in a State that has not adopted a rule of evidence substantially similar to Rule 704 of the Federal Rules of Evidence may introduce in such action evidence that would be admissible if Rule 704 applied in that jurisdiction.

SEC. 18. SUSPENSION OF PENALTIES FOR CERTAIN YEAR 2000 FAILURES BY SMALL BUSINESS CONCERNS.

(a) DEFINITIONS- In this section--

(1) the term 'agency' means any executive agency, as defined in section 105 of title 5, United State Code, that has the authority to impose civil penalties on small business concerns;

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(2) the term 'first-time violation' means a violation by a small business concern of a federally enforceable rule or regulation (other than a Federal rule or regulation that relates to the safety and soundness of the banking or monetary system or for the integrity of the National Securities markets, including protection of depositors and investors) caused by a Y2k failure if that Federal rule or regulation had not been violated by that small business concern within the preceding 3 years; and

(3) the term 'small business concern' has the same meaning as a defendant described in section 5(b) (2) (B).

(b) ESTABLISHMENT OF LIAISONS- Not later than 30 days after the date of the enactment of this Act, each agency shall--

(1) establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations; and

(2) publish the name and phone number of the point of contact for the agency in the Federal Register.

(c) GENERAL RULE - Subject to subsection (d) and (e), no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) STANDARD FOR WAIVER- An agency shall provide a waiver of civil money penalties for a first-time violation, provided that a small business concern demonstrates, and the agency determines, that--

(1) the small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure.

(2) a first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) the first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) the small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

(e) EXCEPTIONS - An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if--

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(1) the small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) the small business concern's fails to correct the violation not later than 1 month after initial notification to the agency.

(f) EXPIRATION- This section shall not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

附錄V

--S.314--

S.314

One Hundred Sixth Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday,

the sixth day of January, one thousand nine hundred and ninety-nine

An Act

To provide for a loan guarantee program to address the Year 2000 computer problems of small business concerns, and for other purposes.

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 'Small Business Year 2000 Readiness Act'.

SEC. 2. FINDINGS.

Congress finds that--

- (1) the failure of many computer programs to recognize the Year 2000 may have extreme negative financial consequences in the Year 2000 , and in subsequent years for both large and small businesses;
- (2) small businesses are well behind larger businesses in implementing corrective changes to their automated systems;
- (3) many small businesses do not have access to capital to fix mission critical automated systems, which could result in severe financial distress or failure for small businesses; and
- (4) the failure of a large number of small businesses due to the Year 2000 computer problem would have a highly detrimental effect on the economy in the Year 2000 and in subsequent years.

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SEC. 3. YEAR 2000 COMPUTER PROBLEM LOAN GUARANTEE PROGRAM.

(a) PROGRAM ESTABLISHED- Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following: `

`(27) YEAR 2000 COMPUTER PROBLEM PROGRAM-

`(A) DEFINITIONS- In this paragraph--

`(i) the term `eligible lender' means any lender designated by the Administration as eligible to participate in the general business loan program under this subsection; and

`(ii) the term `Year 2000 computer problem' means, with respect to information technology, and embedded systems, any problem that adversely effects the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date-dependent data--

`(I) from, into, or between--

`(aa) the 20th or 21st centuries; or

`(bb) the years 1999 and 2000 ; or

`(II) with regard to leap year calculations.

`(B) ESTABLISHMENT OF PROGRAM- The Administration shall--

`(i) establish a loan guarantee program, under which the Administration may, during the period beginning on the date of enactment of this paragraph and ending on December 31, 2000 , guarantee loans made by eligible lenders to small business concerns in accordance with this paragraph; and

`(ii) notify each eligible lender of the establishment of the program under this paragraph, and otherwise take such actions as may be necessary to aggressively market the program under this paragraph.

`(C) USE OF FUNDS- A small business concern that receives a loan guaranteed under this paragraph shall only use the proceeds of the loan to--

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`(i) address the Year 2000 computer problems of that small business concern, including the repair and acquisition of information technology systems, the purchase and repair of software, the purchase of consulting and other third party services, and related expenses; and

`(ii) provide relief for a substantial economic injury incurred by the small business concern as a direct result of the Year 2000 computer problems of the small business concern or of any other entity (including any service provider or supplier of the small business concern), if such economic injury has not been compensated for by insurance or otherwise.

`(D) LOAN AMOUNTS-

`(i) IN GENERAL- Notwithstanding paragraph (3)(A) and subject to clause (ii) of this subparagraph, a loan may be made to a borrower under this paragraph even if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund, the business guaranty loan financing account, and the business direct loan financing account would thereby exceed \$750,000.

`(ii) EXCEPTION- A loan may not be made to a borrower under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund, the business guaranty loan financing account, and the business direct loan financing account would thereby exceed \$1,000,000.

`(E) ADMINISTRATION PARTICIPATION- Notwithstanding paragraph (2)(A), in an agreement to participate in a loan under this paragraph, participation by the Administration shall not exceed--

`(i) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance exceeds \$100,000;

`(ii) 90 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance is less than or equal to \$100,000; and

`(iii) notwithstanding clauses (i) and (ii), in any case in which the subject loan is processed in accordance with the requirements applicable to the SBAExpress Pilot Program, 50 percent of the balance outstanding at the time of disbursement of the loan.

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`(F) PERIODIC REVIEWS- The Inspector General of the Administration shall periodically review a representative sample of loans guaranteed under this paragraph to mitigate the risk of fraud and ensure the safety and soundness of the loan program.

`(G) ANNUAL REPORT- The Administration shall annually submit to the Committees on Small Business of the House of Representatives and the Senate a report on the results of the program carried out under this paragraph during the preceding 12-month period, which shall include information relating to--

`(i) the total number of loans guaranteed under this paragraph;

`(ii) with respect to each loan guaranteed under this paragraph--

`(I) the amount of the loan;

`(II) the geographic location of the borrower; and

`(III) whether the loan was made to repair or replace information technology and other automated systems or to remedy an economic injury; and

`(iii) the total number of eligible lenders participating in the program.'.

(b) GUIDELINES-

(1) IN GENERAL- Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue guidelines to carry out the program under section 7(a)(27) of the Small Business Act, as added by this section.

(2) REQUIREMENTS- Except to the extent that it would be inconsistent with this section or section 7(a)(27) of the Small Business Act, as added by this section, the guidelines issued under this subsection shall, with respect to the loan program established under section 7(a)(27) of the Small Business Act, as added by this section--

(A) provide maximum flexibility in the establishment of terms and conditions of loans originated under the loan program so that such loans may be structured in a manner that enhances the ability of the applicant to repay the debt;

(B) if appropriate to facilitate repayment, establish a moratorium on principal payments under the loan program for up to 1 year beginning on the date of the origination of the loan;

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(C) provide that any reasonable doubts regarding a loan applicant's ability to service the debt be resolved in favor of the loan applicant; and

(D) authorize an eligible lender (as defined in section 7(a)(27)(A) of the Small Business Act, as added by this section) to process a loan under the loan program in accordance with the requirements applicable to loans originated under another loan program established pursuant to section 7(a) of the Small Business Act (including the general business loan program, the Preferred Lender Program, the Certified Lender Program, the Low Documentation Loan Program, and the SBAExpress Pilot Program), if--

(i) the eligible lender is eligible to participate in such other loan program; and

(ii) the terms of the loan, including the principal amount of the loan, are consistent with the requirements applicable to loans originated under such other loan program.

(c) REPEAL- Effective on December 31, 2000, this section and the amendments made by this section are repealed.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

附錄VI

Session 1998-99
Internet Publications
Other Bills before Parliament

House of Commons

**Computer Millenium Non-Compliance
(Contingency Plans) Bill**

This is the text of the Computer Millenium Non-Compliance (Contingency Plans) Bill, as presented to the House of Commons on 2nd February 1999.

**Computer Millenium Non-Compliance
(Contingency Plans) Bill**

ARRANGEMENT OF CLAUSES

Clause

1. Application.
2. Duties of certain organisations to prepare contingency plans.
3. Financial provisions.
4. Short title.

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Require organisations responsible for the provision of essential public services and critical infrastructure to draw up contingency plans in the event of their computer systems failing to deal with calendar dates after 31st December 1999; to require such plans and the names of those responsible for them to be notified to an appropriate authority; to require the plans to be made available on demand; and for connected purposes.

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BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Application.

1. - (1) This Act applies to any organisation of a type listed in subsection (2).

(2) The types of organisations are-

- (a) government departments or agencies;
- (b) local authorities;
- (c) police forces;
- (d) fire brigades;
- (e) ambulance services;
- (f) coastguard services;
- (g) air traffic control services;
- (h) marine pilotage services;
- (i) airport authorities;
- (j) port authorities;
- (k) health authorities;
- (l) water companies;
- (m) sewerage companies;
- (n) electricity providers;
- (o) nuclear fuel reprocessing facilities;
- (p) mains gas providers;
- (q) suppliers or refiners of hydrocarbon fuels;
- (r) providers of telecommunications services;
- (s) banks;
- (t) building societies;
- (u) any organisation or type of organisation which may be added to this list in an order made by the Secretary of State.

Duties of certain organisations to prepare contingency plans.

2. - (1) An organisation to which this Act applies shall be under a duty to-

- (a) assess the capability of every computer system operated by the organisation which is-
 - (i) essential to the continued provision of essential public services or critical infrastructure, and
 - (ii) programmed to manipulate calendar dates

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to deal accurately with dates later than 31st December 1999;

(b) prepare plans for continuing to provide such services or infrastructure in the event of failure on the part of such a system to deal accurately with such dates; and

(c) deposit a copy of such plans and the name of any person responsible for them with the local authority for any area which might be affected by a failure of the kind referred to in paragraph (b).

(2) A local authority shall ensure that any plans deposited with it under subsection (1) are made available for inspection at all reasonable times.

(3) In this section, "computer" and "computer system" shall be construed to include any means of processing instructions capable, when incorporated into a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task and result and will further include (without limitation to the foregoing) a semiconductor chip embedded within a machine.

Financial provisions.

3. *There shall be paid out of money provided by Parliament-*

(a) any expenditure incurred by a government department under or by virtue of this Act; and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

Short title.

4. This Act may be cited as the Computer Millennium Non-Compliance (Contingency Plans) Act 1999.