

does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(e) CONTRIBUTION.—A defendant who is a jointly and severally liable for damages in a year 2000 civil action may recover contribution for such damages from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for such contribution is made.

(f) STATUTE OF LIMITATIONS FOR CONTRIBUTION.—An action for contribution under subsection (e) in connection with a year 2000 civil action may not be brought later than six months after the entry of a final, non-appealable judgment in the year 2000 civil action.

SEC. 402. ECONOMIC LOSSES.

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

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

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

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

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

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

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

It was decided in the { Yeas 190 negative } Nays 236

48.12 [Roll No. 126] AYES—190

Table with 3 columns: Name, State, and Name, State. Lists members of the House of Representatives.

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NOES—236

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NOT VOTING—8

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So the amendment in the nature of a substitute was not agreed to.

After some further time, The SPEAKER pro tempore, Mr. BURR, assumed the Chair.

When Mr. LAHOOD, Chairman, pursuant to House Resolution 166, reported the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

The Congress finds the following:

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

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

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

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

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act:

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

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

(3) **DEFENDANT.**—The term “defendant” means any person against whom a year 2000 claim has been asserted.

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

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

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

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

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

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

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

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

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

(11) **STATE.**—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

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

(13) **YEAR 2000 CLAIM.**—The term “year 2000 claim”—

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

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

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

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

SEC. 4. APPLICATION OF ACT.

(a) **GENERAL RULE.**—This Act applies to any year 2000 claim brought after January 1, 1999, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding with respect to such claim.

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

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

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

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

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

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

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

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

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

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

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

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

The notice under this subsection does not require descriptions of technical specifications or other technical details with respect to the material defect at issue. Except as provided in subsection (c), the prospective plaintiff shall not commence an action in Federal or State court until the expiration of 90 days after the date on which such notice is received. Such 90-day period shall be excluded in the computation of any applicable statute of limitations.

(b) **RESPONSE TO NOTICE.**—

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

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

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

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

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

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

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

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

(f) **SANCTION FOR FRIVOLOUS INVOCATION OF THE STAY PROVISION.**—In any action in which a defendant acts pursuant to subsection (d) to stay the action, and the court subsequently finds that the defendant’s assertion that the suit is a year 2000 action was frivolous and made for the purpose of causing un-

necessary delay, the court may award sanctions to opposing parties in accordance with the provisions of Rule 11 of the Federal Rules of Civil Procedure or the equivalent applicable State rule.

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

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

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

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

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

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

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

SEC. 103. PLEADING REQUIREMENTS.

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

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

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

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

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

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

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

(3) **PRESERVATION OF EVIDENCE.**—

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

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

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

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

TITLE II—YEAR 2000 ACTIONS INVOLVING CONTRACTS

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

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

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

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

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

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

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

With respect to any year 2000 claim involving a breach of contract or a claim related to

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

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

SEC. 301. PROPORTIONATE LIABILITY.

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

(b) **DETERMINATION OF RESPONSIBILITY.**—

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

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

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

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

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

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

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

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

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

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

(3) the defendant's actual or constructive awareness of an actual or potential year 2000 failure is an element of the claim under applicable law, the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves by clear and convincing evidence that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(b) **SUBSTANTIAL PRIVACY.**—For purposes of subsection (a)(2), a plaintiff and a defendant are in substantial privity when, in a year 2000 claim arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations

with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

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

SEC. 303. REASONABLE EFFORTS DEFENSE.

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

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

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

SEC. 304. DAMAGES LIMITATION.

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

(b) **CAPS ON PUNITIVE DAMAGES.**—

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

(A) three times the amount awarded to the plaintiff for compensatory damages; or
(B) \$250,000.

(2) **SPECIAL RULE.**—

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

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

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

(iii) is—

(I) a partnership;

(II) corporation;

(III) association;

(IV) unit of local government; or

(V) organization,

that has fewer than 25 full-time employees, the amount of punitive damages shall not exceed the lesser of three times the amount awarded to the plaintiff for compensatory damages, or \$250,000.

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

(3) **APPLICATION OF LIMITATIONS BY THE COURT.**—The limitations contained in para-

graphs (1) and (2) shall be applied by the court and shall not be disclosed to the jury.

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

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

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

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

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

SEC. 306. LIABILITY OF OFFICERS AND DIRECTORS.

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

(1) \$100,000; or

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

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

TITLE IV—YEAR 2000 CLASS ACTIONS

SEC. 401. MINIMUM INJURY REQUIREMENT.

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

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

SEC. 402. NOTIFICATION.

(a) **NOTICE BY MAIL.**—In any year 2000 action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class by United States mail, return receipt requested. Persons whose actual receipt of the notice is not verified by the court or by counsel for one of the parties shall be excluded from the class unless those

persons inform the court in writing, on a date no later than the commencement of trial or entry of judgment, that they wish to join the class.

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

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

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

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

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

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

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

SEC. 403. DISMISSAL PRIOR TO CERTIFICATION.

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

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

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

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

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

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

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

TITLE V—CLIENT PROTECTION IN CONNECTION WITH YEAR 2000 ACTIONS

SEC. 501. SCOPE.

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

SEC. 502. DEFINITIONS.

In this title:

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

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

(3) **CONTINGENT FEE.**—The term “contingent fee” means the cost or price of an attor-

ney's services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained.

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

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

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

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

SEC. 504. INFORMATION AFTER INITIAL MEETING.

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

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

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

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

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

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

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

(2) in the case of an attorney retained on a contingent fee basis, the total contingent fee

for the attorney's services in connection with the year 2000 claim or year 2000 action.

SEC. 506. CLASS ACTIONS.

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

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

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

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

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

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

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

(f) **ORDER TO PAY COSTS, ETC.**—If the court finds, pursuant to a petition filed under subsection (e) with respect to a year 2000 claim, that the dollar amount of the judgment, verdict, or order that is finally issued is not more favorable to the offeree with respect to the year 2000 claim than the last such offer, the court shall order the offeree to pay the offeror's costs and expenses, including attorneys' fees, incurred with respect to the year

2000 claim from the date the last offer was made or, if the offeree made an offer under this section, from the date the last such offer by the offeree was made, unless the court finds that requiring the payment of such costs and expenses would be manifestly unjust.

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

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

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

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

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

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

A client whose attorney fails to comply with this title may file a civil action for damages in the court in which the year 2000 claim or year 2000 action was filed or could have been filed or other court of competent jurisdiction. The remedy provided by this section is in addition to any other available remedy or penalty.

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

Mr. CONYERS moved to recommit the bill to the Committee on the Judiciary with instructions to report the bill back to the House forthwith with the following amendment:

Add after section 104 the following:

SEC. 105. YEAR 2000 ACTIONS INVOLVING FOREIGN PRODUCTS OR SERVICES.

(a) **GENERAL RULE.**—In any year 2000 action for damages or other relief that is sustained in the United States and that relates to the purchase or use of a product or service manufactured or distributed outside the United States by a foreign seller or manufacturer, the Federal court in which such action is brought shall have jurisdiction over such seller or manufacturer if the seller or manufacturer knew or reasonably should have known that the product or service would be imported for sale or use in the United States.

(b) **ADMISSION.**—If a foreign seller or manufacturer of a product or service involved in a year 2000 action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in the action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) **PROCESS.**—Process in an action described in subsection (a) may be served wherever the foreign seller or manufacturer involved in the action is located, has an agent, or transacts business.

After debate,

By unanimous consent, the previous question was ordered on the motion to recommit with instructions.

The question being put, viva voce, Will the House recommit said bill with instructions?

The SPEAKER pro tempore, Mr. BURR, announced that the nays had it.

Mr. CONYERS demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the { Yeas 184 negative } Nays 246

48.13 [Roll No. 127] AYES—184

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

NOES—246

- Aderholt Bilbray Buyer
Archer Bilirakis Callahan
Armey Bliley Calvert
Bachus Blunt Camp
Baker Boehlert Campbell
Ballenger Boehner Canady
Barcia Bonilla Cannon
Barr Bono Castle
Barrett (NE) Boswell Chabot
Bartlett Boyd Chambliss
Bass Brady (TX) Chenoweth
Bateman Bryant Clement
Bereuter Bryan Coble
Biggert Burton Coburn

- Collins Hutchinson Regula
Combest Hyde Reynolds
Condit Inslee Riley
Cook Isakson Roemer
Cooksey Istook Rogan
Cox Jenkins Rogers
Cramer John Rohrabacher
Crane Johnson (CT) Ros-Lehtinen
Cubin Johnson, Sam Roukema
Cunningham Jones (NC) Royce
Davis (VA) Kasich Ryan (WI)
Deal Kelly Ryun (KS)
DeLay King (NY) Salmon
DeMint Kingston Sanford
Diaz-Balart Knollenberg Saxton
Dickey Kolbe Scarborough
Dicks Kuykendall Schaffer
Dooley LaHood Sensenbrenner
Doolittle Largent Sessions
Dreier Latham Shadegg
Dunn LaTourrette Shaw
Ehlers Lazio Shays
Ehrlich Leach Sherwood
Emerson Lewis (CA) Shimkus
English Lewis (KY) Shuster
Everett Linder Simpson
Ewing LoBiondo Sisisky
Fletcher Lucas (KY) Skeen
Foley Lucas (OK) Smith (MI)
Forbes Manuzello Smith (NJ)
Fossella McCollum Smith (TX)
Fowler Fowler McCreery Smith (WA)
Franks (NJ) McHugh Snyder
Frelinghuysen McInnis Souder
Gallegly McIntosh Spence
Ganske McIntyre Stearns
Gekas McKeon Stenholm
Gibbons Metcalf Stump
Gilchrist Mica Sununu
Gillmor Miller (FL) Sweeney
Gilman Miller, Gary Talent
Goode Moran (KS) Tancredo
Goodlatte Moran (VA) Tanner
Goodling Morella Tauscher
Goss Myrick Tauzin
Graham Nethercutt Taylor (MS)
Granger Ney Taylor (NC)
Green (WI) Northup Terry
Greenwood Norwood Thomas
Gutknecht Nussle Thornberry
Hose Oxley Thune
Hansen Tiahrt Tiaht
Hastert Packard Toomey
Hastings (WA) Paul Upton
Hayes Pease Walden
Hayworth Peterson (MN) Walsh
Hefley Peterson (PA) Wamp
Herger Petri Watkins
Hill (MT) Pickering Watts (OK)
Hilleary Pickett Weldon (FL)
Hobson Pitts Weldon (PA)
Hoekstra Pomo Weller
Holden Porter Whitfield
Horn Portman Wickler
Hostettler Pryce (OH) Wilson
Houghton Quinn Wolf
Hulshof Radanovich Young (AK)
Hunter Ramstad Young (FL)

NOT VOTING—4

- Barton Neapolitano
Brown (CA) Slaughter

So the motion to recommit with instructions was not agreed to.

The question being put, viva voce,

Will the House pass said bill?

The SPEAKER pro tempore, Mr. BURR, announced that the yeas had it.

Mr. CONYERS demanded a recorded vote on passage of said bill, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the { Yeas 236 affirmative } Nays 190

48.14 [Roll No. 128] AYES—236

- Aderholt Baker Barrett (NE)
Archer Ballenger Bartlett
Armey Barcia Bass
Bachus Barr Bateman

- Bereuter Gutknecht Pombo
Biggert Hall (OH) Porter
Billray Hall (TX) Portman
Bilirakis Hansen Pryce (OH)
Bliley Hastert Quinn
Blumenauer Hastings (WA) Radanovich
Blunt Hayes Ramstad
Boehlert Hayworth Regula
Boehner Hefley Ros-Lehtinen
Bonilla Herger Reynolds
Bono Hill (MT) Roemer
Boyd Hilleary Rogan
Brady (TX) Hobson Rogers
Bryant Hoekstra Rohrabacher
Burr Holden Ros-Lehtinen
Burton Horn Roukema
Buyer Hostettler Royce
Callahan Houghton Ryan (WI)
Calvert Hulshof Ryan (KS)
Camp Hunter Salmon
Campbell Hutchinson Sanford
Canady Hyde Scarborough
Cannon Isakson Schaffer
Capps Jenkins Sensenbrenner
Castle John Sessions
Chabot Johnson (CT) Shadegg
Chambliss Johnson, Sam Shaw
Chenoweth Jones (NC) Shays
Clement Kasich Sherwood
Coble Kelly Shimkus
Coburn Kingston Shuster
Collins Knollenberg Simpson
Combest Kolbe Sisisky
Condit Kuykendall Smith (MI)
Cook LaHood Smith (NJ)
Cooksey Largent Smith (TX)
Cramer Latham Smith (WA)
Crane LaTourrette Souder
Cubin Lazio Spence
Cunningham Leach Stearns
Danner Lewis (CA) Stenholm
Davis (VA) Lewis (KY) Stump
Deal Linder Sununu
DeLay LoBiondo Sweeney
Dickey Lucas (KY) Talent
Dooley Lucas (OK) Tancredo
Dreier Manuzello Tanner
Dunn McCollum Tauscher
Ehlers McCreery Tauzin
Ehrlich McHugh Taylor (MS)
Emerson McInnis Taylor (NC)
English McIntosh Terry
Etheridge McKeon Thomas
Everett Metcalf Thornberry
Ewing Mica Thune
Fletcher Miller (FL) Tiaht
Foley Miller, Gary Toomey
Forbes Moran (KS) Udall (CO)
Fossella Moran (VA) Upton
Fowler Morella Velazquez
Franks (NJ) Myrick Walden
Frelinghuysen Nethercutt Walsh
Gallegly Ney Wamp
Gekas Northup Watkins
Gilchrist Norwood Watts (OK)
Gillmor Nussle Weldon (FL)
Gilman Ose Weldon (PA)
Goode Oxley Weller
Goodlatte Packard Whitfield
Goodling Pease Wickler
Gordon Peterson (MN) Wilson
Goss Peterson (PA) Wolf
Granger Petri Young (AK)
Green (WI) Pickering Young (FL)
Greenwood Pitts

NOES—190

- Abercrombie Cardin Doyle
Ackerman Carson Duncan
Allen Clay Edwards
Andrews Clayton Engel
Baird Baldwin Eshoo
Baldacci Conyers Evans
Baldwin Costello Farr
Barrett (WI) Coyne Fattah
Becerra Crowley Filner
Bentsen Cummings Ford
Berkley Davis (FL) Frank (MA)
Berman Davis (IL) Frost
Berry DeFazio Ganske
Bishop DeGette Gejdenson
Blagojevich Delahunt Gephardt
Bonior DeLauro Gibbons
Borski Deutsch Gonzalez
Boswell Diaz-Balart Graham
Boucher Dicks Green (TX)
Brady (PA) Dingell Gutierrez
Brown (FL) Dixon Hastings (FL)
Brown (OH) Doggett Hill (IN)
Capuano Doolittle Hilliard