Raymond, Mississippi; Daniel Reynolds, Minnesota; Elisha Robinson, Pennsylvania; Joshua Robinson, Arizona; Vladimir Robles, Dominican Republic; Eric Rozeboom, Michigan; Benjamin Rupport, Oregon; Jonathan Russell, California; Joshua Rutledge, California; Jeremy Sandlin, Alabama; Sean Sangree, Pennsylvania; Daniel Schroeder, Arkansas; Jonathan Schultz, Mississippi; Jonathan Scott, California; Matthew Sellers, Phillipines; Brock Shinkle, Kansas; Keith Showalter, Ohio; Paul Southall, Ohio; Scott Stephens, Texas; Kevin Stickler, North Carolina; Benjamin Stixrud, Washington; and Jesse Scroggins, Alabama.

Will Scroggins, Alabama; Christopher Sullivan, Minnesota; Joshua Svenhard, California; Nathanael Swanson, New Brunswick; Justin Swartz, California; John Tanner, Michigan; Ryan Thomas, Alabama; John Thornton, Tennessee; William Tucker, Alabama; David Tucker, Alabama; Jefferson Turner, Georgia; Andrew Van Essen, Ontario; James Volling, Ontario; Jeffrey Wall, California; Daniel Weathers, Washington; Jonathan Wharton, Texas; Shane White, Kentucky; Nathan Williams, Kentucky; David Wilson, Alabama; Samuel Wilson, Alabama; Thomas Wood, Washington; John Worden, California; John Yarger, Colorado; Jesse Young, Arkansas; Joshua Young, California; and Tesley Zehner, Wyoming.

Mr. Speaker, I want to pay recognition to 39 young men who traveled to Nashville, Tennessee to clear fallen trees and debris in the wake of a tornado which hit the city in May, 1998. These men gave their time and talent, from May 14–22, 1998, to provide relief for families and the community. One area hit hard by the tornado included President Andrew Jackson's historical Heritage home. These men made the sacrifice to serve others: Jeff Achenbach, Tennessee; Chad Anderson, California; Jacob Braddy, Arizona; Jacory Brady, Colorado; Daniel Buhler, California; Rodian Cabeza, New York; Aaron Childress, Arkansas; Abram Daher, California; Daniel Davies, Indiana; Jonathan De Haan, Kentucky; Randolph Doyer, Texas; Andrew Farley, California; Joseph Farley, California; Gilbert Fernandez, California; Elvio Gross, New York; Zehariah Hamilton, Florida; Adam Hawkins, Arizona; Joshua Johnson, Washington; Michael Jones, Texas; Nathan Jordan, Louisiana; Lindsay Kimbrough, Illinois; Joshua Knaak, Alberta; Jeremy Kuvik, New York; Aaron Laird, Texas; James Marsh, North Carolina; Paul Mathewson, Washington; Charles Mead, Arizona; Jason Monnin, Florida; Jonah Offtermatt, Texas; Vladimir Robles, Dominican Republic; Eric Rozeboom, Michigan; Daniel Schroeder, Mississippi; Brock Shinkle, Kansas; Paul Southall, California; John Tanner, Michigan; John Thornton, Tennessee; Andrew Van Essen, Swaziland; John Yarger, Colorado; and Tesley Zehner, Wyoming.

THE ''YEAR 2000 INFORMATION AND READINESS DISCLOSURE ACT''

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1998

Mr. HYDE. Mr. Speaker, the Year 2000 Information and Readiness Disclosure Act (S. 2392) is intended to promote the voluntary sharing of information needed to discover, avoid, or fix problems with year 2000 calculations in our nation's software, computers, and technology products. In all civil litigation including certain antitrust actions, the Act limits the extent to which year 2000 statements can be the basis for liability and it prevents certain evidentiary uses, against the maker, if a subset of such statements. However, the Act ensures that only responsible, good faith information-sharing gets such protection.

In particular, the Act protects good faith sharing of two kinds of year 2000 information: a board category called ''year 2000 statements,'' and a narrower subcategory called ''year 2000 readiness disclosures.'' Year 2000 statements and readiness disclosures can include any year 2000 related subject matter, but year 2000 readiness disclosures must be in writing, be clearly labeled, and concern one's own products or services. Certain already-existing year 2000 statements may be designated as year 2000 readiness disclosures and receive the protections applicable to year 2000 readiness disclosures under the Act. The protections given to year 2000 statements and readiness disclosures protect all those who help in any way to make a year 2000 statement or readiness disclosure, so a broad group of individuals and entities are protected.

The Act encourages the use of the Internet to provide notice of all matters relating to year 2000 processing. In addition, the Act protects against disclosure and use in civil actions year 2000 information voluntarily provided to the government under a ''special data gathering request.'' Finally, the Act creates a temporary exemption to the antitrust laws for sharing of year 2000 information, unless it results in an actual agreement to boycott, allocate markets, or fix prices.

The Act does not create new causes of action or expand any existing causes of action, nor does it create new obligations or duties. The Act does not create any duty to provide notice about a year 2000 processing problem. The intent of this legislation is to promote sharing of year 2000 information. This would be frustrated if any year 2000 statement were the sole basis for any finding of liability on the part of the maker. Furthermore, it is not the intent of this legislation to hold the maker of a year 2000 readiness disclosure liable for the adequacy or sufficiency of its disclosure where such disclosure is not otherwise required by law or contract. The Act also does not affect existing contracts, tariffs, intellectual property rights or consumer protections applicable to solicitations or offers to sell consumer products.

The Act's protections are limited. The Act does not change or address in any way liability for a year 2000 processing failure; does not change or reduce any underlying duty, standard of care or liability for a year 2000 failure; does not apply to certain consumer transactions; does not prevent any underlying facts regarding a failure being demonstrated in court; does not prevent any governmental entity from requiring the disclosure of any information; and does not preclude any claim to the extent it is not based on a year 2000 statement.

The Act prevents the use as evidence against the maker of only a narrow range of year 2000 statements—year 2000 readiness disclosures—to prove the truth of the disclosure. They can, however, be put into evidence to demonstrate matters other than their truth. Further, year 2000 readiness disclosures can be used to in contract litigation as part of the evidence necessary to show anticipatory breach, repudiation, or similar actions, although they should not be the sole evidence supporting liability. A judge can limit (but not totally abrogate) this protection in order to prevent an abusive or bad-faith use of the disclosure contrary to the purposes of the Act.

Year 2000 statements other than year 2000 readiness disclosures can be brought into evidence for any purpose. However, they may not be the basis for any finding of liability against the maker, except where the maker knew the statement was false, made it with intent to deceive, or made it with reckless disregard as to its truth or falsity.

In cases of alleged trade defamation, product disparagement, and the like, year 2000 statements generally can be the basis of liability only if the maker knew the statement was wrong or was reckless about the statement's truth or falsity.

Internet website notice is generally deemed adequate. Important exceptions exist, however, and Internet website notice alone is not deemed adequate in cases of personal injury or serious property damage. In specified circumstances, in order to obtain the benefits of the Act, sellers, manufacturers, or providers of year 2000 remediation products or services must inform their customers about the effects of this Act during the course of solicitations or offers to sell.

For purpose of actions brought under the securities laws, year 2000 statements contained in filings with the Securities and Exchange Commission or Federal banking regulators and disclosures or writings that, when made, accompanied the solicitation of an offer or sale of securities are not covered by the Act.

The following section-by-section analysis illustrates important details of the Act.

Section 1, Short Title. This section entitles the Act the ''Year 2000 Information and Readiness Disclosure Act''.

Section 2, Findings and Purposes. This section lays out the findings underlying the bill and the board purposes the bill is intended to serve.

Potentially millions of pieces of technology can not recognize certain dates around the year 2000. Because year 2000 processing problems could incapacitate government, commerce, and utilities, correcting the year 2000 problem is a matter of national and global interest.

Prompt, candid, and thorough disclosure and exchange of information about year 2000 readiness would enhance year 2000 readiness. Concern about liability is impeding the sharing of such information. Uniform legal standards regarding year 2000 information are in the national interest.

Enacted under the Commerce Clause power, this Act's purpose is to promote disclosure and exchange of year 2000 information by establishing uniform legal principles.

Section 3. Definitions. This section defines various terms.

The term ''antitrust laws'' means section (a)(1) of the Clayton Act (15 U.S.C. §12(a)) and section 5 of the Federal Trade Commission Act (15 U.S.C.§45), to the extent that section applies to unfair competition, and similar State law.

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

The term ''consumer product'' means any personal property or service that is normally used for personal, family, or household purposes.

The term ''covered action''—used to define the types of litigation subject to the Act—is intentionally broad. It means a civil action of any kind arising under Federal or State law, except one brought by a Federal, State, or other government entity, agency, or authority acting in its regulatory, supervisory, or enforcement capacity. In other words, ''covered action'' does not include regulatory, enforcement, and criminal actions brought by government entities.

The term ''maker'' means each person or entity, including a State or subdivision thereof, that issues or publishes any year 2000 statement. It also means each such person or entity that prepares, develops, issues, approves, or publishes any year 2000 statement. The term is defined very broadly to ensure that all entities, public or private, may benefit from the Act, including all those who help to make a year 2000 statement or readiness disclosure by reviewing, advising on, or commenting on it. Fairness requires that anyone who assists in the formulation of the year 2000 statement should receive the same protection given to the entity that actually issues or publishes the statement.

The term ''republication'' means any repetition, in whole or in part, of a year 2000 statement originally made by another.

The term ''year 2000 Internet website'' means an Internet website or other similar electronically accessible service, clearly designated as an area where year 2000 statements are posted or otherwise made accessible to the public. Elsewhere, the Act specifically recognizes use of the Internet and similar means of communication for purposes of providing notice. This is intended to encourage companies, government, and the public to use all current technologies such as the Internet to address year 2000 processing problems by sharing and widely disseminating year 2000 information in as timely and cost-effective manner as possible.

The term ''year 2000 processing'' means processing, transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and leap year calculations. The ''year 2000 problem'' or ''millennium bug'' is not simply a software problem and is not strictly related only to January 1, 2000. Year 2000 processing includes a wide variety of date-related data processing functions in microchips, software, ''firmware,'' and other products.

The term ''year 2000 readiness disclosure'' means any written year 2000 statement (a term defined elsewhere) clearly identified on its face as a year 2000 readiness disclosure, inscribed in a tangible medium or stored and retrievable in perceivable form, and 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 entity. The ''year 2000 readiness disclosure'' is a narrower, more highly protected subset of year 2000 statements. Year 2000 readiness disclosures can include the same year 2000-related subject matter as year 2000 statements. The difference is that year 2000 readiness disclosures must be (a) clearly identified as such, (b) in writing, and (c) about the maker's own products or services.

The term ''year 2000 remediation product or service'' means a program or service designed by one person or entity to detect or correct year 2000 processing problems in the product or service of a different person or entity. A ''year 2000 remediation product or service'' is not one that is designed or used to detect or correct year 2000 processing problems in its provider's own products or services. Under this definition, the producer of a software program does not provide a year 2000 remediation product or service if it attempts to fix the product or service it provided, if it provides an upgrade or ''patch'' for the product or service it provided, or if it sells a product that essentially replaces an existing product or service (regardless of who manufactured or provided that product or service). In contrast, a person or entity that sells products or services for the purpose of detecting or correcting year 2000 processing problems in others' products (including programming in microchips, software, and ''firmware''), does offer year 2000 remediation products or services within the meaning of this definition.

The term ''year 2000 statement'' mean any communication or other conveyance of information assessing year 2000 processing capabilities, concerning plans to verify year 2000 processing capabilities, concerning testing of year 2000 processing by products, or services utilizing products, or relating to year 2000 processing. A year 2000 statement may contain a very broad array of information potentially useful to anyone seeking to discover, avoid, or correct a year 2000 processing problem. Year 2000 statements may be in any format, oral or written, and address year 2000 processing or readiness in any way.

In actions under the securities laws (as that term is defined in federal law), the term ''year 2000 statement'' excludes statements in documents filed with the Securities and Exchange Commission or with federal banking regulators, as well as statements or writings made contemporaneously with and accompanying an offer to engage in a securities transaction. The latter part of this exclusion is intended to apply to year 2000 statements that are incorporated in an express solicitation—for example, year 2000 statements made by a broker as part of a ''sales pitch'' designed to induce the purchase of shares.

Section 4. Protection for Year 2000 Statements. This section and section 5 establish certain protections relating to year 2000 statements and readiness disclosures. The two sections are intended and designed to stimulate voluntary, good faith information-sharing with the public, among companies, and with the government. They limit certain uses in litigation of year 2000 statements and readiness disclosures. However, such limitations are themselves restricted in order to promote—though they cannot guarantee—only the sharing of useful and valid information.

Section 4(a). Evidence Exclusion. No year 2000 readiness disclosure shall be admissible against the maker to prove the accuracy or truth of any year 2000 statement in such readiness disclosure, except that a year 2000 readiness disclosure may be admissible in a claim for anticipatory breach, repudiation, or a similar claim against the maker. A court may limit application of this subsection if the year 2000 disclosure amounted to bad faith or fraud or was well beyond what is reasonable to achieve the purposes of the Act.

Under this subsection, the narrow category of year 2000 readiness disclosures is given greater protection than year 2000 statements. Year 2000 readiness disclosures may not be admitted into evidence against the maker to prove the truth or accuracy of any matter asserted in them. This is meant to provide protection for disclosure of all information, including accurate and helpful information about the nature and scope of year 2000 problems, solutions, and readiness.

Subsection 4(a) does not create any new cause of action, expand or reduce any existing cause of action, or otherwise create any new right or obligation. Neither does this subsection change or reduce any liability for a year 2000 failure, restrict alternative means of obtaining information, or prevent any fact underlying a claim related to failed year 2000 processing from being demonstrated in court through evidence other than year 2000 readiness disclosures. This section does not prevent the maker of the year 2000 statement within a year 2000 readiness disclosure from using its own year 2000 readiness disclosure in litigation for any purpose.

For example, in a breach of warranty action against a manufacturer based on damages arising from a failed computer system, a year 2000 readiness disclosure issued by the manufacturer that contained a statement that the system had year 2000 processing problems could not be introduced against the manufacturer to prove that the system had year 2000 processing problems. Where a year 2000 readiness disclosure included a statement that the system had no year 2000 processing problems, that statement could be admitted (along with evidence that the maker knew it was false) to show that the maker intended to mislead. In both cases, any information provided by the manufacturer outside of the year 2000 readiness disclosure or obtained in discovery during the litigation would be admissible to prove the existence of year 2000 processing problems.

Subsection 4(a) has two narrow exceptions.

First, year 2000 readiness disclosures may be admissible in actions under anticipatory breach, repudiation, and similar contract claims, however designated. In general, a year 2000 readiness disclosure should not be the sole evidence supporting liability in such actions. A year 2000 readiness disclosure suggesting that products or services have year 2000 processing problems should prompt concerned persons and entities to thoroughly investigate the nature and scope of the problem, and whether and how it affects the maker's ability to perform under a contract. A year 2000 readiness disclosure could, however, be specific enough to leave no question about the maker's inability to perform on a contract.

Second, a judge may limit (but not totally abrogate) this subsection's evidentiary protection in order to prevent a fraudulent, bad faith, abusive, or similar use of the year 2000 readiness disclosure contrary to the purposes of the Act. A judge cannot admit a year 2000 readiness disclosure at will, but only if use of such disclosure goes clearly beyond the purposes served by the Act. For example, a party should not be permitted to simply mark all of its year 2000-related documents as year 2000 readiness disclosures, send them to a business partner, and claim that they are, thereby, not admissible in an action related to a subsequent year 2000 processing failure.

Subsection 4(b). Liability for False, Misleading, and Inaccurate Year 2000 Statements. To the extent an action is based on a false, inaccurate, or misleading year 2000 statement, the maker generally shall not be liable. If it was not a republication, the maker may be liable if the statement was material and if the maker made the year 2000 statement with actual knowledge that it was false, inaccurate, or misleading; with intent to deceive or mislead; or with reckless disregard for its accuracy. The term ''reckless disregard'' was derived from the public figure defamation standard established by the Supreme Court in *New York Times* v. *Sullivan,* 376 U.S. 254 (1964). If the year 2000 statement was a republication, the maker may be liable if the year 2000 statement was material and if the maker made the year 2000 statement with actual knowledge that it was false, inaccurate, or misleading; with intent to deceive or mislead; or without notice in such year 2000 statement that the maker has not

verified the contents of the republication, or that the maker is not the source (in which case the source must be identified in the year 2000 statement or the republication). In addition to proving all other elements of the action, each of these elements must be established by clear and convincing evidence.

Subsection 4(b) addresses protections provided to the entire class of year 2000 statements. The intent is to ensure that good-faith, honest attempts to provide important, needed year 2000 information do not become the basis for liability if the information later turns out to have been inaccurate in some way. In an unprecedented, urgent, changing situation such as dealing with the year 2000 problem, the best information available today may be outdated tomorrow through no fault or dereliction of the information's provider. Subsection 4(b) treats statements differently when they contain information obtained from another source, allowing one source to republish information learned from another if the republisher discloses that is doing so and identifies the original source. When the republication is made on an Internet website, notice provided on the republisher's website can be adequate for this purpose where the website contains clearly identified links to websites maintained by the original source.

Subsection 4(c). Liability for Defamation or Similar Claims. In a defamation, trade disparagement, or similar action based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker shall not be liable unless clear and convincing evidence shows that the maker of the year 2000 statement knew it was false or was reckless as to whether it was true or false.

Subsection 4(c) addresses the treatment of year 2000 statements alleged to be untrue in litigation based on defamation, trade disparagement, or a similar claim, however denominated. Here, the Act specifies that year 2000 statements, whether the maker is the source or merely passing along information, may be the basis of liability only if all other existing requirements of the claim are proved, and there is a further showing, by clear and convincing evidence, that the maker made the statement with knowledge of its falsity, or with reckless disregard for the truth. The standard here is modeled on the public figure defamation standard established by the Supreme Court in *New York Times* v. *Sullivan,* 376 U.S. 254 (1964).

Subsection 4(d). Year 2000 Internet Website. When the adequacy of notice about year 2000 processing is at issue, posting notice in a commercially reasonable manner on a year 2000 website shall be deemed an adequate mechanism for providing notice, unless this mechanism is contrary to prior representations, is inconsistent with a regular course of dealing, or occurs where actual notice is clearly most reasonable. This section does not affect other law, require notice regarding year 2000 processing, preclude or suggest types of notice, or mandate the content or timing of any notice.

Subsection 4(d) is intended to encourage the use of the Internet to provide notice of all matters relating to year 2000 processing problems and solutions. Because technologically sophisticated parties have ready recourse to the Internet, and because posting on a website provides a cost-effective and widely accessible means of dispersing information, this subsection makes it clear that, absent contravening circumstances, website notice is appropriate. Thus, subject to exceptions discussed below, use of an Internet website to provide year 2000 information is deemed adequate notice in any litigation in which the adequacy of notice is at issue.

The exceptions specified in this subsection include: (a) cases where use of website notice would be contrary to express prior representations regarding the mechanism of notice that were made by the party giving notice; (b) cases where reliance on website notice would be contrary to the regular course of dealing between the parties (This exception would apply where, for example, the party providing notice has in the past engaged in a regular course of communicating with the recipient by mail or telephone. In light of such a regular practice, website notice would not be deemed adequate.); and (c) cases, not involving prior representations regarding notice or a regular course of dealings between the parties, where actual notice is clearly the most commercially reasonable means of providing notice.

This last exception envisions circumstances where the cost of providing actual notice is relatively low, the injury that might be caused by a failure to provide notice is known to be relatively high, the party providing notice knows the identities of the potential recipients, and the party providing notice has a practicable means of providing actual notice. For example, this exception could come into play if a vendor sold expensive or custom manufacturing components to eleven manufacturers, knowing that notice of year 2000 processing problems is essential to operation of their plants. In such circumstances, actual notice would likely be the most commercially reasonable means of providing notice.

In contrast, actual notice would not be commercially reasonable if a producer sold numerous components or copies of software to numerous third parties, who in turn incorporated those products into products that were sold further down the distribution chain, particularly to numerous or unidentified. customers. In those circumstances, the original producer could not by reasonable effort discover and provide notice to all of the parties who ultimately came into possession of its product and the producer could not know the existence, nature, or scope of potential injury caused by not providing actual notice. Website notice in this case would be deemed adequate. The use of the word ''clearly'' in this exception indicates that the presumption should be weighted in favor of finding website notice to be adequate.

Congress recognizes that the Internet and related electronically accessible systems are fast becoming a reliable, standard resource for transmission of information, especially among sophisticated parties. It anticipates that the primary or default means for providing notice of year 2000 processing information, year 2000 readiness disclosures, and other information related to the year 2000 problem will typically be the Internet and similar electronic formats. However, this subsection does not alter Federal or State statutory or regulatory (as distinct from common law) notice requirements, and is not intended to increase the effect of any existing law or duty regarding the method of providing, or the content of notice. Moreover, this provision is not intended to preclude the use of any other means of providing notice.

Subsection 4(e). Limitation on Effect of Year 2000 Statements. A year 2000 statement shall not amend or alter a contract or warranty, unless the parties have agreed otherwise, the year 2000 statement was made in conjunction with formation of the contract or warranty, or the contract or warranty provides for amendment or alteration through such a statement.

Subsection 4(e) addresses limitations on the effect of year 2000 statements (including year 2000 readiness disclosures). Year 2000 statements do not, in general, amend or otherwise alter an existing contract, tariff, or warranty. Exceptions exist where there is a written agreement to so make amendments, where the year 2000 statement was part of the formation of a contract or warranty, and where the contract, warranty, or tariff specifies that it may be amended by a year 2000 statement. In those cases, other law determines the effect of a year 2000 statement on a contract, tariff, or warranty.

Subsection 4(f). Special Data Gathering. A federal entity may designate a request for voluntary provision of year 2000 information as a ''special year 2000 data gathering request.'' Except with the consent of the provider of information, such information shall not be subject to disclosure under the Freedom of Information Act (''FOIA''), shall not be disclosed to any third party, and may not be used in any civil action (though the same information, acquired separately, may be so used).

Subsection 4(f) is premised on existing government power to request voluntary submission of detailed company-specific information in order to ascertain the year 2000 readiness of an industry or economic sector. The government may request that the information be submitted to a non-governmental entity that agrees to coordinate such data gathering, including providing analyses of that data. The subsection protects any and all information provided to the government or such third party voluntarily acting at the government's request from release to any entity or individual without the consent of the provider.

This immunity is accomplished in three ways: (a) All information provided pursuant to this process is deemed exempt from disclosure under FOIA. (To the extent that such provided data could be said to be held by the government acting through a third party, FOIA would still not require the release of such data without the submitting entity's permission.); (b) Neither the government nor a third-party data gatherer may disclose such data without the permission of the providing entity; and (c) Neither the government nor any third party may use the information, either directly or indirectly, in any civil litigation.

However, to ensure that this protection is not misused, the subsection provides that information can be used by anyone for any purpose if it has been voluntarily made public or if it is obtained by independent legal means. A litigant may utilize any lawful means to obtain information directly from the providing entity, or from any recipient other than the recipient under the special year 2000 data gathering request.

Section 5. Temporary Antitrust Exemption. Consistent with recent year 2000-related Business Action Letters issued by the Department of Justice, this section provides that the antitrust laws shall not apply to conduct or communications solely for the purpose of correcting or avoiding year 2000 processing problems, and only to the extent necessary to achieve such purposes. This broad exemption has certain limitations. First, the exemption protects only conduct occurring between the date of enactment of the Act and July 14, 2001 (inclusive) (as provided in subsection 7(a)). It does not protect conduct occurring thereafter, though the cessation of the statutory exemption need not affect the position taken by the Department of Justice in Business Action Letters. Second, this exemption does not apply to conduct that involves or results in agreements to boycott any person, allocate markets, or fix prices.

Section 6. Exclusions.—

Subsection 6(a). Effect on Information Disclosure. The Act does not affect the authority of any government to require provision or disclosure of any information. This subsection clarifies that the intent of Congress is not to limit the ability of a Federal or State entity,

agency, or authority to act in an enforcement capacity with respect to any Federal or State statute or regulation governing the disclosure or non-disclosure of information.

Subsection 6(b). Contracts and Other Claims. The Act does not alter any right under contract or tariff. In an action brought by a consumer, the Act does not apply to a year 2000 statement made in the course of a solicitation. The Act does not apply to a year 2000 statement about a year 2000 remediation product or service made in a solicitation unless the maker provides notice that the year 2000 statement is subject to the Act and that the Act may reduce the purchaser's legal rights.

Subsection 6(b)(1) reiterates that a basic premise of this Act is to leave any contractual relationships (public or private), and any enforcement of rights under those relationships, unaffected. Where the terms or effect of a contract are in conflict with the provisions of this Act, the contract or agreement will control. Conversely, nothing in the Act affects the enforceability of provisions that limit the liability of contracting parties. Moreover, Congress does not intend that plaintiffs use this provision to evade the protections provided by this Act by restating as contract claims causes of action that actually sound in tort.

One example of the appropriate use of this provision would be where a contract provided one party with the explicit contractual right to receive from another party an accurate year 2000 statement or a year 2000 statement which is the product of the exercise of ''reasonable efforts'' by the other party. In that situation, subsection 4(b)—which provides a different standard of performance—would not apply. Similarly, where a contract provides for delivery of notice by means other than an Internet website, this Act would not treat notice delivered via an Internet website as adequate. In addition, the evidentiary exclusion of subsection 4(a) would not apply in a situation where a party provides a year 2000 readiness disclosure pursuant to a contractual obligation to provide year 2000 readiness information.

Subsection 6(b)(2)(A) provide that the Act does not apply in actions by consumers against persons or entities that make year 2000 statements directly to them in solicitations (including advertisements) or offers to sell consumer products—in other words, activities that are entirely ancillary to requests for purchases.

Subsection 6(b)(2)(B) provides that sellers, manufacturers, or providers of year 2000 remediation products or services, in soliciting remediation business or offering to furnish their remediation product or service, must provide additional notice to obtain the benefits of the Act. Such notice is specified in the Act and is intended primarily to alert unsophisticated clients of such remediators that, in any litigation, this Act may affect the buyer's ability to use the remediators' statements in court. This provision does not require or imply that every written or oral statement be accompanied by the specified notice. Rather, it is intended to require that once, during the solicitation or offering of service, the remediation provider must provide the specified notice to the prospective purchaser or client, consistent with the procedures set out in Subsection 4(d).

Subsection 6(b)(3) provides that the Act does not preclude a claim to the extent it is not based on a year 2000 statement. For example, if a lawsuit advanced causes of action both for negligent misrepresentation based on the alleged inaccuracy of a year 2000 statement and for product defect (based on a year 2000-related product failure), the first cause of action would likely be precluded by the Act, but the second would not.

Subsection 6(c). Duty or Standard of Care. The Act does not impose any more stringent standard of care on the maker of a year 2000 statement. The Act does not preclude any disclosure additional to a year 2000 statement or disclosure. The Act does not alter the standard or duty of care owed by a fiduciary.

An essential purpose of the Act is to reduce liability concerns about release of year 2000 processing information. Consistent with that purpose, Subsection 6(c)(1) provides that nothing in this Act should be interpreted as imposing liability where none would exist absent the Act. Specifically, it is the intent of Congress that a maker not be liable for the adequacy or sufficiency of a year 2000 readiness disclosure regarding the maker's products or services, where notice of the maker's year 2000 readiness is not otherwise required by law or contract, unless section 4(b) standards are not met.

Also, Subsection 6(c)(3) is intended to clarify that Congress did not intend the Act—except to the limited extent specified in Subsection 4(b), regarding false, misleading or inaccurate year 2000 statements, and in Subsection 4(c), regarding defamatory or disparaging year 2000 statements—to preempt, alter, or affect in any way existing State law regarding any duty or standard of care owed by a fiduciary. For instance, the duty of loyalty owed by a fiduciary is not affected by this Act.

Intellectual Property Rights. The Act does not affect any party's intellectual property rights of any kind whatsoever.

Injunctive Relief. The Act does not preclude injunctive relief. Thus, for instance, while a claim for damages resulting from a false, inaccurate, or misleading year 2000 statement is governed by subsection 4(b), that subsection has no impact on the right of a claimant to receive injunctive relief preventing further communication of false or misleading information contained in a year 2000 statement.

Section 7. Applicability.—

Effective Date. The Act is effective on the date of its enactment. It applies to lawsuits brought after July 14, 1998 that deal with (a) year 2000 statements made between July 14, 1998 and July 14, 2001 (inclusive); (b) year 2000 readiness disclosures made between the date of enactment of the Act and July 14, 2001 (inclusive); and (c) year 2000 statements designated as year 2000 readiness disclosures (as described below).

Previously Made Readiness Disclosure. A year 2000 statement made between January 1, 1996 and the date of enactment of the Act (inclusive) may be designated a year 2000 readiness disclosure if it complied with the requirements of a year 2000 readiness disclosure (other than being designated a ''year 2000 readiness disclosure'') at the time it was made and if, within 45 days of the enactment of the Act, the maker gives individual notice of the designation to prior recipients or posts such notice on its year 2000 website and gives such notice by the same method the year 2000 statement was previously made. Designation of a year 2000 statement as a year 2000 readiness disclosure shall not have effect against any person or entity who proves by clear and convincing evidence that it would be prejudiced by the designation and who timely objects to the designation.

Section 8. Year 2000 Council Working Groups. The President's year 2000 Conversion Council (see Exec. Order 13,073, 63 Fed. Reg. 6,467 (1998)) may establish working groups who will engage outside organizations to address year 2000 problems. The Council shall maintain public information on the working groups and their members. The Council shall seek balance among the working groups. The Council shall maintain and publish information on attendance and participation at meetings. Meetings shall be announced in advance and held publicly, to the extent consistent with the Act's purposes. The Federal Advisory Committee Act shall not apply to working groups.

This section replaces the Federal Advisory Committee Act requirements which otherwise might have been applicable to some of the work of the Council. Though the Act gives the Council no new powers, working groups may be established by the Council to advise it, discuss year 2000 problems in various sectors of the nation's economy, share information, and otherwise promote the purposes of this Act. Congress expects that the Council will disband, rendering this section inoperative, reasonably promptly after the turn of the century.

Section 9. National Information Clearinghouse and Website. In cooperation with other Federal agencies and with the private sector, the General Services Administration (''GSA'') shall establish and maintain until July 14, 2002 a national year 2000 website, designed to assist consumers, small businesses, and local governments in obtaining various year 2000 information. GSA shall consult with a variety of federal entities. GSA shall report to Congress 60 days after the enactment of the Act on compliance with this section.

REGARDING A BILL REQUESTING THE SECRETARY OF THE TREASURY TO PREPARE A REPORT ON THE FINANCIAL STATUS OF THE COMMONWEALTH OF PUERTO RICO

HON. PHIL ENGLISH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1998

Mr. ENGLISH of Pennsylvania. Mr. Speaker, today I am introducing a bill that would require the Secretary of the Treasury to prepare a report on the current Federal program costs, and Federal revenues, attributable to the Commonwealth of Puerto Rico and on other matters relating to the taxation of residents of the Commonwealth of Puerto Rico.

Regardless of when or how Congress determines the ultimate political status of Puerto Rico, there are urgent issues of Federal fiscal policy relating to the present commonwealth system in Puerto Rico that will not wait. Congress must address issues of fiscal equity and responsibility for the 3.8 million U.S. citizens of Puerto Rico, without being held hostage to the on-going political status debate.

At current levels of Federal spending in Puerto Rico, now approximately $10 billion annually, U.S. taxpayer dollars will be used to subsidize the current commonwealth system in Puerto Rico at a cost in excess of $100 billion over the next ten years. Yet, there are no plans or even proposals that Congress can consider with respect to introduction of Federal income tax and other Federal taxes from which Puerto Rico was temporarily exempted earlier in this century.

Congress never intended to make Puerto Rico a permanent haven from Federal taxation. If the commonwealth system of local government under Federal powers is to continue, even the current spending levels require Congress to consider imposition of some part or all of those Federal taxes that currently are not collected in Puerto Rico.