

105TH CONGRESS
2D SESSION

H. R. 4355

To encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 1998

Mr. BURTON of Indiana (for himself, Mr. HORN, Mrs. MORELLA, Mr. DAVIS of Virginia, Mr. SANFORD, Mr. KUCINICH, Mr. WAXMAN, Mr. SENSENBRENNER, Mr. BARCIA of Michigan, Mr. DINGELL, Mr. LEACH, Mr. LAFALCE, Mr. BOUCHER, Mr. GORDON, Ms. MCCARTHY of Missouri, Mr. BLUMENAUER, Mr. LUTHER, Mr. BROWN of California, Ms. DELAURO, Mr. CUMMINGS, Mr. MORAN of Virginia, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. DEGETTE, Mrs. CAPPS, Ms. LOFGREN, Mr. DOYLE, and Mr. LAMPSON) (all by request): introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Year 2000 Information
5 Disclosure Act”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Thousands of computer systems, software,
4 and semiconductors are not capable of recognizing
5 certain dates in 1999 and after December 31, 1999,
6 and will read dates in the year 2000 and thereafter
7 as if they represent the year 1900 or thereafter.
8 This could cripple systems that are essential to the
9 functioning of markets, commerce, consumer prod-
10 ucts, utilities, government, and safety systems in the
11 United States and throughout the world. Re-
12 programming or replacing affected systems before
13 this problem cripples essential systems is a matter of
14 national and global interest.

15 (2) The prompt and thorough disclosure and
16 exchange of information related to Year 2000 readi-
17 ness of entities, products, and services would greatly
18 enhance the ability of public and private entities to
19 improve their Year 2000 readiness and, thus, is a
20 matter of national importance and a vital factor in
21 minimizing disruption to the Nation's economic well-
22 being.

23 (3) Concern about the potential for legal liabil-
24 ity associated with the disclosure and exchange of
25 Year 2000 compliance information is impeding the
26 disclosure and exchange of such information.

1 (4) The capability to freely disseminate and ex-
2 change information relating to Year 2000 readiness
3 with the public and with other companies without
4 undue concern about litigation is critical to the abil-
5 ity of public and private entities to address Year
6 2000 needs in a timely manner.

7 (5) The national interest will be served by uni-
8 form legal standards in connection with the disclo-
9 sure and exchange of Year 2000 readiness informa-
10 tion that will promote disclosures and exchanges of
11 such information in a timely fashion.

12 (b) PURPOSES.—Based upon the powers contained in
13 Article I, Section 8, Clause 3 of the United States Con-
14 stitution, the purposes of this Act are to promote the free
15 disclosure and exchange of information related to Year
16 2000 readiness and to lessen burdens on interstate com-
17 merce by establishing certain uniform legal principles in
18 connection with the disclosure and exchange of informa-
19 tion related to Year 2000 readiness.

20 **SEC. 3. DEFINITIONS.**

21 For purposes of this Act, the following definitions
22 apply:

23 (1) YEAR 2000 STATEMENT.—The term “Year
24 2000 statement” means any statement—

1 (A) concerning an assessment, projection,
2 or estimate concerning Year 2000 processing
3 capabilities of any entity or entities, product, or
4 service, or a set of products or services;

5 (B) concerning plans, objectives, or time-
6 tables for implementing or verifying the Year
7 2000 processing capabilities of an entity or en-
8 tities, a product, or service, or a set of products
9 or services; or

10 (C) concerning test plans, test dates, test
11 results, or operational problems or solutions re-
12 lated to Year 2000 processing by—

13 (i) products; or

14 (ii) services that incorporate or utilize
15 products.

16 (2) STATEMENT.—The term “statement”
17 means a disclosure or other conveyance of informa-
18 tion by 1 party to another or to the public, in any
19 form or medium whatsoever, excluding, for the pur-
20 poses of any actions brought under the securities
21 laws, as that term is defined in section 3(a)(47) of
22 the Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a)(47)), documents or materials filed with the
24 Securities and Exchange Commission, or with Fed-
25 eral banking regulators pursuant to section 12(i) of

1 the Securities Exchange Act of 1934, or disclosures
2 or writings made specifically in connection with the
3 sale or offering of securities.

4 (3) YEAR 2000 PROCESSING.—The term “Year
5 2000 processing” means the processing (including,
6 without limitation, calculating, comparing, sequenc-
7 ing, displaying, or storing), transmitting, or receiv-
8 ing of date or date/time data from, into, and be-
9 tween the twentieth and twenty-first centuries, and
10 the years 1999 and 2000, and leap year calculations.

11 (4) YEAR 2000 INTERNET WEBSITE.—The term
12 “Year 2000 Internet website” means an Internet
13 website or other similar electronically accessible serv-
14 ice, designated on the website or service by the per-
15 son creating or controlling the website or service as
16 an area where Year 2000 statements and other in-
17 formation about the Year 2000 processing capabili-
18 ties of an entity or entities, a product, service, or a
19 set of products or services, are posted or otherwise
20 made accessible to the general public.

21 (5) COVERED ACTION.—The term “covered ac-
22 tion” means a civil action arising under Federal or
23 State, law except for any civil action arising under
24 Federal or State law brought by a Federal, State, or

1 other public entity, agency, or authority acting in a
2 regulatory, supervisory, or enforcement capacity.

3 (6) REPUBLICATION.—The term “republica-
4 tion” means any repetition of a statement originally
5 made by another.

6 (7) CONSUMER.—The term “consumer” means
7 an individual who buys a consumer product other
8 than for purposes of resale.

9 (8) CONSUMER PRODUCT.—The term “con-
10 sumer product” means any personal property or
11 service which is normally used for personal, family,
12 or household purposes.

13 **SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.**

14 (a) IN GENERAL.—Except as otherwise provided in
15 subsection (c), in any covered action, to the extent such
16 action is based on an allegedly false, inaccurate, or mis-
17 leading Year 2000 statement, the maker of any such state-
18 ment shall not be liable under Federal or State law with
19 respect thereto unless the claimant establishes, in addition
20 to all other requisite elements of the applicable action, that
21 the statement was material, and—

22 (1) where the statement was not a republica-
23 tion, that the statement was—

24 (A) made with knowledge that the state-
25 ment was false, inaccurate, or misleading;

1 (B) made with an intent to mislead or de-
2 ceive; or

3 (C) made with a grossly negligent failure
4 to determine or verify that the statement was
5 accurate and not false or misleading; and

6 (2) where the statement was a republication of
7 a statement regarding a third party, that the repub-
8 lication was made—

9 (A) with knowledge that the statement was
10 false, inaccurate, or misleading; or

11 (B) without a disclosure by the maker that
12 the republished or repeated statement is based
13 on information supplied by another and that
14 the maker has not verified the statement.

15 (b) YEAR 2000 INTERNET WEBSITE.—In any cov-
16 ered action in which the adequacy of notice about Year
17 2000 processing is at issue and no clearly more effective
18 method of notice is practicable, the posting of a notice by
19 the entity purporting to have provided such notice on that
20 entity's Year 2000 Internet website shall be presumed to
21 be an adequate mechanism for providing such notice.
22 Nothing in this subsection shall—

23 (1) alter or amend any Federal or State statute
24 or regulation requiring that notice about Year 2000
25 processing be provided using a different mechanism;

1 (2) create a duty to provide notice about Year
2 2000 processing;

3 (3) preclude or suggest the use of any other
4 medium for notice about Year 2000 processing or
5 require the use of an Internet website; or

6 (4) mandate the content or timing of any no-
7 tices about Year 2000 processing.

8 (c) DEFAMATION OR SIMILAR CLAIMS.—In any cov-
9 ered action arising under any Federal or State law of defa-
10 mation, or any Federal or State law relating to trade dis-
11 paragement or a similar claim, to the extent such action
12 is based on an allegedly false Year 2000 statement, wheth-
13 er oral or published in any medium, the maker of any such
14 Year 2000 statement shall not be liable with respect to
15 such statement, unless the claimant establishes by clear
16 and convincing evidence, in addition to all other requisite
17 elements of the applicable action, that the statement was
18 made with knowledge that the statement was false or with
19 reckless disregard as to its truth or falsity.

20 (d) LIMITATION ON EFFECT OF YEAR 2000 STATE-
21 MENTS.—In any covered action, no Year 2000 statement
22 shall be interpreted or construed as an amendment to or
23 alteration of a written contract or written warranty,
24 whether entered into by a public or private party. This
25 subsection shall not apply—

1 (1) to the extent the party whose statement is
2 alleged to have amended or altered a contract or
3 warranty has otherwise agreed in writing to so alter
4 or amend the written contract or written warranty;

5 (2) to Year 2000 statements made in conjunc-
6 tion with the formation of the written contract or
7 written warranty; or

8 (3) where the contract or warranty specifically
9 provides for its amendment or alteration through the
10 making of a Year 2000 statement.

11 Existing law shall apply to determine what effect, if any,
12 a Year 2000 statement within the scope of paragraph (1),
13 (2), or (3) has on a written contract or written warranty.

14 (e) SPECIAL DATA GATHERING.—A Federal entity,
15 agency, or authority may expressly designate requests for
16 the voluntary provision of information relating to Year
17 2000 processing (including without limitation, Year 2000
18 statements) as “Special Year 2000 Data Gathering Re-
19 quests” made pursuant to this subsection. Information
20 provided in response to such requests shall be prohibited
21 from disclosure under the Freedom of Information Act (5
22 U.S.C. 552 et seq.), and may not be used by any Federal
23 entity, agency, or authority, directly or indirectly, in any
24 civil action arising under any Federal or State law: *Pro-*
25 *vided, however,* That nothing in this subsection shall pre-

1 clude a Federal entity, agency, or authority from sepa-
2 rately obtaining the information submitted in response to
3 this subsection through the use of independent legal au-
4 thorities and using such separately obtained information
5 in any action.

6 **SEC. 5. EXCLUSIONS.**

7 (a) CONSUMER INFORMATION.—This Act does not
8 cover statements made directly to a consumer in connec-
9 tion with the sale of a consumer product by the seller or
10 manufacturer or provider of the consumer product.

11 (b) EFFECT ON INFORMATION DISCLOSURE.—This
12 Act does not affect, abrogate, amend, or alter, and shall
13 not be construed to affect, abrogate, amend, or alter, the
14 authority of a Federal or State entity, agency, or authority
15 to enforce a requirement to provide, disclose, or not to
16 disclose, information under a Federal or State statute or
17 regulation or to enforce such statute or regulation.

18 (c) CONTRACTS AND OTHER CLAIMS.—Except as
19 may be otherwise provided in subsection 4(d), this Act
20 does not affect, abrogate, amend, or alter, and shall not
21 be construed to affect, abrogate, amend, or alter, any right
22 by written contract, whether entered into by a public or
23 private party, under any Federal or State law, nor shall
24 it preclude claims not based solely on Year 2000 state-
25 ments.

1 (d) DUTY OR STANDARD OF CARE.—This Act shall
2 not be deemed to impose upon the maker or publisher of
3 any Year 2000 statement any increased obligation, duty,
4 or standard of care than is otherwise applicable under
5 Federal or State law. Nor does this Act preclude any party
6 from making or providing any additional disclaimer or like
7 provisions in connection with any Year 2000 statement.

8 (e) TRADEMARKS.—This Act does not affect, abro-
9 gate, amend, or alter, and shall not be construed to affect,
10 abrogate, amend, or alter, any right in a trademark, trade
11 name, or service mark, under any Federal or State law.

12 (f) INJUNCTIVE RELIEF.—Nothing in this Act shall
13 be deemed to preclude a claimant from seeking temporary
14 or permanent injunctive relief with respect to a Year 2000
15 statement.

16 **SEC. 6. APPLICABILITY.**

17 This Act shall apply to any Year 2000 statement
18 made on or after July 14, 1998, through July 14, 2001.
19 This Act shall not affect or apply to any action pending
20 on July 14, 1998.

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