

105TH CONGRESS
2^D SESSION

S. 2392

AN ACT

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

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 and Readiness Disclosure Act”.

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

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

3 (1)(A) At least thousands but possibly millions
4 of information technology computer systems, soft-
5 ware programs, and semiconductors are not capable
6 of recognizing certain dates in 1999 and after De-
7 cember 31, 1999, and will read dates in the year
8 2000 and thereafter as if those dates represent the
9 year 1900 or thereafter or will fail to process those
10 dates.

11 (B) The problem described in subparagraph (A)
12 and resulting failures could incapacitate systems
13 that are essential to the functioning of markets,
14 commerce, consumer products, utilities, government,
15 and safety and defense systems, in the United States
16 and throughout the world.

17 (C) Reprogramming or replacing affected sys-
18 tems before the problem incapacitates essential sys-
19 tems is a matter of national and global interest.

20 (2) The prompt, candid, and thorough disclo-
21 sure and exchange of information related to year
22 2000 readiness of entities, products, and services—

23 (A) would greatly enhance the ability of
24 public and private entities to improve their year
25 2000 readiness; and

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

5 (3) Concern about the potential for legal liabil-
6 ity associated with the disclosure and exchange of
7 year 2000 readiness information is impeding the dis-
8 closure and exchange of such information.

9 (4) The capability to freely disseminate and ex-
10 change information relating to year 2000 readiness,
11 solutions, test practices and test results, with the
12 public and other entities without undue concern
13 about litigation is critical to the ability of public and
14 private entities to address year 2000 needs in a
15 timely manner.

16 (5) The national interest will be served by uni-
17 form legal standards in connection with the disclo-
18 sure and exchange of year 2000 readiness informa-
19 tion that will promote disclosures and exchanges of
20 such information in a timely fashion.

21 (b) PURPOSES.—Based upon the powers contained in
22 article I, section 8, clause 3 of the Constitution of the
23 United States, the purposes of this Act are—

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

1 (2) to assist consumers, small businesses, and
2 local governments in effectively and rapidly respond-
3 ing to year 2000 problems; and

4 (3) to lessen burdens on interstate commerce by
5 establishing certain uniform legal principles in con-
6 nection with the disclosure and exchange of informa-
7 tion related to year 2000 readiness.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) **ANTITRUST LAWS.**—The term “antitrust
11 laws”—

12 (A) has the meaning given to it in sub-
13 section (a) of the first section of the Clayton
14 Act (15 U.S.C. 12(a)), except that such term
15 includes section 5 of the Federal Trade Com-
16 mission Act (15 U.S.C. 45) to the extent such
17 section 5 applies to unfair methods of competi-
18 tion; and

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

21 (2) **CONSUMER.**—The term “consumer” means
22 an individual who acquires a consumer product for
23 purposes other than resale.

24 (3) **CONSUMER PRODUCT.**—The term “con-
25 sumer product” means any personal property or

1 service which is normally used for personal, family,
2 or household purposes.

3 (4) COVERED ACTION.—The term “covered ac-
4 tion” means civil action of any kind, whether arising
5 under Federal or State law, except for an action
6 brought by a Federal, State, or other public entity,
7 agency, or authority acting in a regulatory, super-
8 visory, or enforcement capacity.

9 (5) MAKER.—The term “maker” means each
10 person or entity, including the United States or a
11 State or political subdivision thereof, that—

12 (A) issues or publishes any year 2000
13 statement;

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

16 (C) assists in, contributes to, or reviews,
17 reports or comments on during, or approves, or
18 otherwise takes part in the preparing, develop-
19 ing, issuing, approving, or publishing of any
20 year 2000 statement.

21 (6) REPUBLICATION.—The term “republi-
22 cation” means any repetition, in whole or in part, of
23 a year 2000 statement originally made by another.

24 (7) YEAR 2000 INTERNET WEBSITE.—The term
25 “year 2000 Internet website” means an Internet

1 website or other similar electronically accessible serv-
2 ice, clearly designated on the website or service by
3 the person or entity creating or controlling the con-
4 tent of the website or service as an area where year
5 2000 statements concerning that person or entity
6 are posted or otherwise made accessible to the gen-
7 eral public.

8 (8) YEAR 2000 PROCESSING.—The term “year
9 2000 processing” means the processing (including
10 calculating, comparing, sequencing, displaying, or
11 storing), transmitting, or receiving of date data
12 from, into, and between the 20th and 21st centuries,
13 and during the years 1999 and 2000, and leap year
14 calculations.

15 (9) YEAR 2000 READINESS DISCLOSURE.—The
16 term “year 2000 readiness disclosure” means any
17 written year 2000 statement—

18 (A) clearly identified on its face as a year
19 2000 readiness disclosure;

20 (B) inscribed on a tangible medium or
21 stored in an electronic or other medium and re-
22 trievable in perceivable form; and

23 (C) issued or published by or with the ap-
24 proval of a person or entity with respect to year
25 2000 processing of that person or entity or of

1 products or services offered by that person or
2 entity.

3 (10) YEAR 2000 REMEDIATION PRODUCT OR
4 SERVICE.—The term “year 2000 remediation prod-
5 uct or service” means a software program or service
6 licensed, sold, or rendered by a person or entity and
7 specifically designed to detect or correct year 2000
8 processing problems with respect to systems, prod-
9 ucts, or services manufactured or rendered by an-
10 other person or entity.

11 (11) YEAR 2000 STATEMENT.—

12 (A) IN GENERAL.—The term “year 2000
13 statement” means any communication or other
14 conveyance of information by a party to another
15 or to the public, in any form or medium—

16 (i) concerning an assessment, projec-
17 tion, or estimate concerning year 2000
18 processing capabilities of an entity, prod-
19 uct, service, or set of products and serv-
20 ices;

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

1 (iii) concerning test plans, test dates,
2 test results, or operational problems or so-
3 lutions related to year 2000 processing
4 by—

5 (I) products; or

6 (II) services that incorporate or
7 utilize products; or

8 (iv) reviewing, commenting on, or oth-
9 erwise directly or indirectly relating to year
10 2000 processing capabilities.

11 (B) NOT INCLUDED.—For the purposes of
12 any action brought under the securities laws, as
13 that term is defined in section 3(a)(47) of the
14 Securities Exchange Act of 1934 (15 U.S.C.
15 78c(a)(47)), the term year 2000 statement does
16 not include statements contained in any docu-
17 ments or materials filed with the Securities and
18 Exchange Commission, or with Federal banking
19 regulators, pursuant to section 12(i) of the Se-
20 curities Exchange Act of 1934 (15 U.S.C.
21 781(i)), or disclosures or writing that when
22 made accompanied the solicitation of an offer or
23 sale of securities.

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

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

8 (1) a year 2000 readiness disclosure may be ad-
9 missible to serve as the basis for a claim for antici-
10 patory breach, or repudiation of a contract, or a
11 similar claim against the maker, to the extent pro-
12 vided by applicable law; and

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

20 (b) FALSE, MISLEADING AND INACCURATE YEAR
21 2000 STATEMENTS.—Except as provided in subsection
22 (c), in any covered action, to the extent that such action
23 is based on an allegedly false, inaccurate, or misleading
24 year 2000 statement, the maker of that year 2000 state-
25 ment shall not be liable under Federal or State law with
26 respect to that year 2000 statement unless the claimant

1 establishes, in addition to all other requisite elements of
2 the applicable action, by clear and convincing evidence,
3 that—

4 (1) the year 2000 statement was material; and

5 (2)(A) to the extent the year 2000 statement
6 was not a republication, that the maker made the
7 year 2000 statement—

8 (i) with actual knowledge that the year
9 2000 statement was false, inaccurate, or mis-
10 leading;

11 (ii) with intent to deceive or mislead; or

12 (iii) with a reckless disregard as to the ac-
13 curacy of the year 2000 statement; or

14 (B) to the extent the year 2000 statement was
15 a republication that the maker of the republication
16 made the year 2000 statement—

17 (i) with actual knowledge that the year
18 2000 statement was false, inaccurate, or mis-
19 leading;

20 (ii) with intent to deceive or mislead; or

21 (iii) without notice in that year 2000 state-
22 ment that—

23 (I) the maker has not verified the con-
24 tents of the republication; or

1 (II) the maker is not the source of the
2 republication and the republication is
3 based on information supplied by another
4 person or entity identified in that year
5 2000 statement or republication.

6 (c) DEFAMATION OR SIMILAR CLAIMS.—In a covered
7 action arising under any Federal or State law of defama-
8 tion, trade disparagement, or a similar claim, to the extent
9 such action is based on an allegedly false, inaccurate, or
10 misleading year 2000 statement, the maker of that year
11 2000 statement shall not be liable with respect to that
12 year 2000 statement, unless the claimant establishes by
13 clear and convincing evidence, in addition to all other req-
14 uisite elements of the applicable action, that the year 2000
15 statement was made with knowledge that the year 2000
16 statement was false or made with reckless disregard as
17 to its truth or falsity.

18 (d) YEAR 2000 INTERNET WEBSITE.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), in any covered action, other than a cov-
21 ered action involving personal injury or serious phys-
22 ical damage to property, in which the adequacy of
23 notice about year 2000 processing is at issue, the
24 posting, in a commercially reasonable manner and
25 for a commercially reasonable duration, of a notice

1 by the entity charged with giving such notice on the
2 year 2000 Internet website of that entity shall be
3 deemed an adequate mechanism for providing that
4 notice.

5 (2) EXCEPTION.—Paragraph (1) shall not
6 apply if the court finds that the use of the mecha-
7 nism of notice—

8 (A) is contrary to express prior representa-
9 tions regarding the mechanism of notice made
10 by the party giving notice;

11 (B) is materially inconsistent with the reg-
12 ular course of dealing between the parties; or

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

19 (3) CONSTRUCTION.—Nothing in this sub-
20 section shall—

21 (A) alter or amend any Federal or State
22 statute or regulation requiring that notice about
23 year 2000 processing be provided using a dif-
24 ferent mechanism;

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

3 (C) preclude or suggest the use of any
4 other medium for notice about year 2000 proc-
5 essing or require the use of an Internet website;
6 or

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

9 (e) LIMITATION ON EFFECT OF YEAR 2000 STATE-
10 MENTS.—

11 (1) IN GENERAL.—In any covered action, a
12 year 2000 statement shall not be interpreted or con-
13 strued as an amendment to or alteration of a con-
14 tract or warranty, whether entered into by or ap-
15 proved for a public or private entity.

16 (2) NOT APPLICABLE.—

17 (A) IN GENERAL.—This subsection shall
18 not apply—

19 (i) to the extent the party whose year
20 2000 statement is alleged to have amended
21 or altered a contract or warranty has oth-
22 erwise agreed in writing to so alter or
23 amend the contract or warranty;

1 (ii) to a year 2000 statement made in
2 conjunction with the formation of the con-
3 tract or warranty; or

4 (iii) if the contract or warranty spe-
5 cifically provides for its amendment or al-
6 teration through the making of a year
7 2000 statement.

8 (B) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall affect applicable Federal or
10 State law in effect as of the date of enactment
11 of this Act with respect to determining the ex-
12 tent to which a year 2000 statement affects a
13 contract or warranty.

14 (f) SPECIAL DATA GATHERING.—

15 (1) IN GENERAL.—A Federal entity, agency, or
16 authority may expressly designate a request for the
17 voluntary provision of information relating to year
18 2000 processing, including year 2000 statements, as
19 a special year 2000 data gathering request made
20 pursuant to this subsection.

21 (2) SPECIFICS.—A special year 2000 data gath-
22 ering request made under this subsection shall speci-
23 fy a Federal entity, agency, or authority, or, with its
24 consent, another public or private entity, agency, or
25 authority, to gather responses to the request.

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

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

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

13 (C) may not be used by any Federal entity,
14 agency, or authority or by any third party, di-
15 rectly or indirectly, in any civil action arising
16 under any Federal or State law.

17 (4) EXCEPTIONS.—

18 (A) INFORMATION OBTAINED ELSE-
19 WHERE.—Nothing in this subsection shall pre-
20 clude a Federal entity, agency, or authority, or
21 any third party, from separately obtaining the
22 information submitted in response to a request
23 under this subsection through the use of inde-
24 pendent legal authorities, and using such sepa-
25 rately obtained information in any action.

1 (B) VOLUNTARY DISCLOSURE.—A restric-
2 tion on use or disclosure of information under
3 this subsection shall not apply to any informa-
4 tion disclosed to the public with the express
5 consent of the party responding to a special
6 year 2000 data gathering request or disclosed
7 by such party separately from a response to a
8 special year 2000 data gathering request.

9 **SEC. 5. TEMPORARY ANTITRUST EXEMPTION.**

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

14 (1) facilitating responses intended to correct or
15 avoid a failure of year 2000 processing in a com-
16 puter system, in a component of a computer system,
17 in a computer program or software, or services uti-
18 lizing any such system, component, program, or
19 hardware; or

20 (2) communicating or disclosing information to
21 help correct or avoid the effects of year 2000 proc-
22 essing failure

23 (b) APPLICABILITY.—Subsection (a) shall apply only
24 to conduct that occurs, or an agreement that is made and

1 implemented, after the date of enactment of this Act and
2 before July 14, 2001.

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

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

9 **SEC. 6. EXCLUSIONS.**

10 (a) EFFECT ON INFORMATION DISCLOSURE.—This
11 Act does not affect, abrogate, amend, or alter the author-
12 ity of a Federal or State entity, agency, or authority to
13 enforce a requirement to provide or disclose, or not to pro-
14 vide or disclose, information under a Federal or State stat-
15 ute or regulation or to enforce such statute or regulation.

16 (b) CONTRACTS AND OTHER CLAIMS.—

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

24 (2) OTHER CLAIMS.—

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

7 (B) SPECIFIC NOTICE REQUIRED.—In any
8 covered action, this Act shall not apply to a
9 year 2000 statement, concerning a year 2000
10 remediation product or service, expressly made
11 in an offer to sell or in a solicitation (including
12 an advertisement) by a seller, manufacturer, or
13 provider, of that product or service unless, dur-
14 ing the course of the offer or solicitation, the
15 party making the offer or solicitation provides
16 the following notice in accordance with section
17 4(d):

18 “Statements made to you in the
19 course of this sale are subject to the Year
20 2000 Information and Readiness Disclo-
21 sure Act (____ U.S.C. ____). In the case
22 of a dispute, this Act may reduce your
23 legal rights regarding the use of any such
24 statements, unless otherwise specified by
25 your contract or tariff.”.

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

4 (c) DUTY OR STANDARD OF CARE.—

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

10 (2) ADDITIONAL DISCLOSURE.—This Act does
11 not preclude any party from making or providing
12 any additional disclosure, disclaimer, or similar pro-
13 visions in connection with any year 2000 readiness
14 disclosure or year 2000 statement.

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

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

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

4 **SEC. 7. APPLICABILITY.**

5 (a) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as otherwise pro-
7 vided in this section, this Act shall become effective
8 on the date of enactment of this Act.

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

12 (3) APPLICATION TO STATEMENTS AND DISCLO-
13 SURES.—Except as provided in subsection (b)—

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

17 (B) this Act shall apply to any year 2000
18 readiness disclosure made beginning on the date
19 of enactment of this Act and ending on July
20 14, 2001.

21 (b) PREVIOUSLY MADE READINESS DISCLOSURE.—

22 (1) IN GENERAL.—For the purposes of section
23 4(a), a person or entity that issued or published a
24 year 2000 statement after January 1, 1996, and be-
25 fore the date of enactment of this Act, may des-

1 designate that year 2000 statement as a year 2000
2 readiness disclosure if—

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

7 (B) within 45 days after the date of enact-
8 ment of this Act, the person or entity seeking
9 the designation—

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

14 (ii) prominently posts notice that
15 meets the requirements of paragraph (2)
16 on its year 2000 Internet website, com-
17 mencing prior to the end of the 45-day pe-
18 riod under this subparagraph and extend-
19 ing for a minimum of 45 consecutive days
20 and also by using the same method of noti-
21 fication used to originally provide the ap-
22 plicable year 2000 statement.

23 (2) REQUIREMENTS.—A notice under para-
24 graph (1)(B) shall—

1 (A) state that the year 2000 statement
2 that is the subject of the notice is being des-
3 ignated a year 2000 readiness disclosure; and

4 (B) include a copy of the year 2000 state-
5 ment with a legend labeling the statement as a
6 “Year 2000 Readiness Disclosure”.

7 (c) EXCEPTION.—No designation of a year 2000
8 statement as a year 2000 readiness disclosure under sub-
9 section (b) shall apply with respect to any person or entity
10 that—

11 (1) proves, by clear and convincing evidence,
12 that it relied on the year 2000 statement prior to
13 the receipt of notice described above and it would be
14 prejudiced by the retroactive designation of the year
15 2000 statement as a year 2000 readiness disclosure;
16 and

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

23 **SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.**

24 (a) IN GENERAL.—

1 (1) WORKING GROUPS.—The President’s Year
2 2000 Council (referred to in this section as the
3 “Council”) may establish and terminate working
4 groups composed of Federal employees who will en-
5 gage outside organizations in discussions to address
6 the year 2000 problems identified in section 2(a)(1)
7 to share information related to year 2000 readiness,
8 and otherwise to serve the purposes of this Act.

9 (2) LIST OF GROUPS.—The Council shall main-
10 tain and make available to the public a printed and
11 electronic list of the working groups, the members of
12 each working group, and a point of contact, together
13 with an address, telephone number, and electronic
14 mail address for the point of contact, for each work-
15 ing group created under this section.

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

19 (4) ATTENDANCE.—The Council shall maintain
20 and make available to the public a printed and elec-
21 tronic list of working group members who attend
22 each meeting of a working group as well as any
23 other individuals or organizations participating in
24 each meeting.

1 essing of computers, systems, products and services,
2 including websites maintained by independent agen-
3 cies and other departments.

4 (2) CONSULTATION.—In creating the national
5 year 2000 website, the Administrator of General
6 Services shall consult with—

7 (A) the Director of the Office of Manage-
8 ment and Budget;

9 (B) the Administrator of the Small Busi-
10 ness Administration;

11 (C) the Consumer Product Safety Commis-
12 sion;

13 (D) officials of State and local govern-
14 ments;

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

17 (F) representatives of consumer and indus-
18 try groups; and

19 (G) representatives of other entities, as de-
20 termined appropriate.

21 (b) REPORT.—The Administrator of General Services
22 shall submit a report to the Committees on the Judiciary
23 of the Senate and the House of Representatives and the
24 Committee on Governmental Affairs of the Senate and the
25 Committee on Government Reform and Oversight of the

- 1 House of Representatives not later than 60 days after the
- 2 date of enactment of this Act regarding planning to com-
- 3 ply with the requirements of this section.

Passed the Senate September 28, 1998.

Attest:

Secretary.

105TH CONGRESS
2^D SESSION

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AN ACT

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

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