

facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor successor¹ protocols to such protocol, to communicate information of all kinds by wire or radio.

(Pub. L. 110-385, title II, §216, Oct. 10, 2008, 122 Stat. 4104.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title II of Pub. L. 110-385, Oct. 10, 2008, 122 Stat. 4102, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 6551 of this title and Tables.

CHAPTER 92—YEAR 2000 COMPUTER DATE CHANGE

Sec.	
6601.	Findings and purposes.
6602.	Definitions.
6603.	Application of chapter.
6604.	Punitive damages limitations.
6605.	Proportionate liability.
6606.	Prelitigation notice.
6607.	Pleading requirements.
6608.	Duty to mitigate.
6609.	Application of existing impossibility or commercial impracticability doctrines.
6610.	Damages limitation by contract.
6611.	Damages in tort claims.
6612.	State of mind; bystander liability; control.
6613.	Appointment of special masters or magistrate judges for Y2K actions.
6614.	Y2K actions as class actions.
6615.	Applicability of State law.
6616.	Admissible evidence ultimate issue in State courts.
6617.	Suspension of penalties for certain year 2000 failures by small business concerns.

§ 6601. Findings and purposes

(a) Findings

The Congress finds the following:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all busi-

nesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

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

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

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

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

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

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

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

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

(7) A proliferation of frivolous lawsuits relating to year 2000 computer date-change problems by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

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

¹ So in original. Probably should be preceded by “or”.

(b) Purposes

Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purposes of this chapter are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve year 2000 computer date-change problems before they develop;

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

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

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

(Pub. L. 106-37, § 2, July 20, 1999, 113 Stat. 185.)

SHORT TITLE

Pub. L. 106-37, § 1(a), July 20, 1999, 113 Stat. 185, provided that: "This Act [enacting this chapter] may be cited as the 'Y2K Act'."

§ 6602. Definitions

In this chapter:

(1) Y2K action

The term "Y2K action"—

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

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

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

(2) Y2K failure

The term "Y2K failure" means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

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

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

(C) accurately to account for the year 2000's status as a leap year, including rec-

ognition and processing of the correct date on February 29, 2000.

(3) Government entity

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

(4) Material defect

The term "material defect" means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term "material defect" does not include a defect that—

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

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

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

(5) Personal injury

The term "personal injury" means physical injury to a natural person, including—

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

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

(6) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) Contract

The term "contract" means a contract, tariff, license, or warranty.

(8) Alternative dispute resolution

The term "alternative dispute resolution" means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, mini-trial, and arbitration.

(Pub. L. 106-37, § 3, July 20, 1999, 113 Stat. 187.)

§ 6603. Application of chapter**(a) General rule**

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

(b) No new cause of action created

Nothing in this chapter creates a new cause of action, and, except as otherwise explicitly pro-