

(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.

(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 recognition 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, ministerial, 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 provided in this chapter, nothing in this chapter expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) Claims for personal injury or wrongful death excluded

This chapter does not apply to a claim for personal injury or for wrongful death.

(d) Warranty and contract preservation

(1) In general

Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) Interpretation of contract

In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(3) Unconscionability

Nothing in paragraph (1) shall prevent enforcement of State law doctrines of unconscionability, including adhesion, recognized as of January 1, 1999, in controlling judicial precedent by the courts of the State whose law applies to the Y2K action.

(e) Preemption of State law

This chapter supersedes State law to the extent that it establishes a rule of law applicable

to a Y2K action that is inconsistent with State law, but nothing in this chapter implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

(f) Application with Year 2000 Information and Readiness Disclosure Act

Nothing in this chapter supersedes any provision of the Year 2000 Information and Readiness Disclosure Act.

(g) Application to actions brought by a government entity

(1) In general

To the extent provided in this subsection, this chapter shall apply to an action brought by a government entity described in section 6602(1)(C) of this title.

(2) Definitions

In this subsection:

(A) Defendant

(i) In general

The term “defendant” includes a State or local government.

(ii) State

The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(iii) Local government

The term “local government” means—

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in subclause (I) recognized by the Secretary of Housing and Urban Development.

(B) Y2K upset

The term “Y2K upset”—

(i) means an exceptional temporary non-compliance with applicable federally enforceable measurement, monitoring, or reporting requirements directly related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include—

(I) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that provide for the safety and soundness of the banking or monetary system, or for the integrity of the national securities markets, including the protection of depositors and investors;

(III) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements to