

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-

vided 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 the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance;

(V) lack of preparedness for a Y2K failure; or

(VI) noncompliance with the underlying federally enforceable requirements to which the applicable federally enforceable measurement, monitoring, or reporting requirement relates.

**(3) Conditions necessary for a demonstration of a Y2K upset**

A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(A) the defendant previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(B) a Y2K upset occurred as a result of a Y2K failure or other emergency directly related to a Y2K failure;

(C) noncompliance with the applicable federally enforceable measurement, monitoring, or reporting requirement was unavoidable in the face of an emergency directly related to a Y2K failure and was necessary to

prevent the disruption of critical functions or services that could result in harm to life or property;

(D) upon identification of noncompliance the defendant invoking the defense began immediate actions to correct any violation of federally enforceable measurement, monitoring, or reporting requirements; and

(E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that the defendant became aware of the upset.

**(4) Grant of a Y2K upset defense**

Subject to the other provisions of this subsection, the Y2K upset defense shall be a complete defense to the imposition of a penalty in any action brought as a result of noncompliance with federally enforceable measurement, monitoring, or reporting requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph (3) are met.

**(5) Length of Y2K upset**

The maximum allowable length of the Y2K upset shall be not more than 15 days beginning on the date of the upset unless specific relief by the appropriate regulatory authority is granted.

**(6) Fraudulent invocation of Y2K upset defense**

Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to the sanctions provided in section 1001 of title 18.

**(7) Expiration of defense**

The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

**(8) Preservation of authority**

Nothing in this subsection shall affect the authority of a government entity to seek injunctive relief or require a defendant to correct a violation of a federally enforceable measurement, monitoring, or reporting requirement.

**(h) Consumer protection from Y2K failures**

**(1) In general**

No person who transacts business on matters directly or indirectly affecting residential mortgages shall cause or permit a foreclosure on any such mortgage against a consumer as a result of an actual Y2K failure that results in an inability to accurately or timely process any mortgage payment transaction.

**(2) Notice**

A consumer who is affected by an inability described in paragraph (1) shall notify the servicer for the mortgage, in writing and within 7 business days from the time that the consumer becomes aware of the Y2K failure and the consumer's inability to accurately or timely fulfill his or her obligation to pay, of such failure and inability and shall provide to the servicer any available documentation with respect to the failure.

**(3) Actions may resume after grace period**

Notwithstanding paragraph (1), an action prohibited under paragraph (1) may be re-

sumed, if the consumer's mortgage obligation has not been paid and the servicer of the mortgage has not expressly and in writing granted the consumer an extension of time during which to pay the consumer's mortgage obligation, but only after the later of—

(A) four weeks after January 1, 2000; or

(B) four weeks after notification is made as required under paragraph (2), except that any notification made on or after March 15, 2000, shall not be effective for purposes of this subsection.

#### (4) Applicability

This subsection does not apply to transactions upon which a default has occurred before December 15, 1999, or with respect to which an imminent default was foreseeable before December 15, 1999.

#### (5) Enforcement of obligations merely tolled

This subsection delays but does not prevent the enforcement of financial obligations, and does not otherwise affect or extinguish the obligation to pay.

#### (6) Definition

In this subsection—

(A) The term “consumer” means a natural person.

(B) The term “residential mortgage” has the meaning given the term “federally related mortgage loan” under section 2602 of title 12.

(C) The term “servicer” means the person, including any successor, responsible for receiving any scheduled periodic payments from a consumer pursuant to the terms of a residential mortgage, including amounts for any escrow account, and for making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage. Such term includes the person, including any successor, who makes or holds a loan if such person also services the loan.

#### (i) Applicability to securities litigation

In any Y2K action in which the underlying claim arises under the securities laws (as defined in section 78c(a) of this title), the provisions of this chapter, other than section 6612(b) of this title, shall not apply.

(Pub. L. 106-37, § 4, July 20, 1999, 113 Stat. 188.)

#### REFERENCES IN TEXT

The Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (f), is Pub. L. 105-271, Oct. 19, 1998, 112 Stat. 2386, which was formerly set out as a note under section 1 of this title.

### § 6604. Punitive damages limitations

#### (a) In general

In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

### (b) Caps on punitive damages

#### (1) In general

Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of—

(A) three times the amount awarded for compensatory damages; or

(B) \$250,000.

#### (2) Defendant described

A defendant described in this paragraph is a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed \$500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

#### (3) No cap if injury specifically intended

Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

#### (c) Government entities

Punitive damages in a Y2K action may not be awarded against a government entity.

#### (d) Institutions of higher education

##### (1) In general

Subject to paragraph (2), punitive damages in a Y2K action may not be awarded against an institution<sup>1</sup> of higher education as defined in section 1001(a) of title 20.

##### (2) Exception

Paragraph (1) shall not apply to an institution of higher education if the Y2K failure in the Y2K action occurred in a computer-based student financial aid system of that institution of higher education, and the institution—

(A) has passed Y2K data exchange testing with the Department of Education; or

(B) is not or was not in the process of performing data exchange testing with the Department of Education at the time the Department terminates such testing.

(Pub. L. 106-37, § 5, July 20, 1999, 113 Stat. 192; Pub. L. 106-113, div. B, § 1000(a)(4) [title III, § 311], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.)

#### AMENDMENTS

1999—Subsec. (d). Pub. L. 106-113 added subsec. (d).

### § 6605. Proportionate liability

#### (a) In general

Except in a Y2K action that is a contract action, and except as provided in subsections (b) through (g), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportionate re-

<sup>1</sup> So in original. Probably should be “institution”.