

**(C) Subject to contribution**

A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

**(D) Suits by consumers**

(i) Notwithstanding subparagraph (A), the other defendants are jointly and severally liable for the uncollectible share if—

(I) the plaintiff is a consumer whose suit alleges or arises out of a defect in a consumer product; and

(II) the plaintiff is suing as an individual and not as part of a class action.

(ii) In this subparagraph:

(I) The term “class action” means—

(aa) a single lawsuit in which: (1) damages are sought on behalf of more than 10 persons or prospective class members; or (2) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

(bb) any group of lawsuits filed in or pending in the same court in which: (1) damages are sought on behalf of more than 10 persons; and (2) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(II) The term “consumer” means an individual who acquires a consumer product for purposes other than resale.

(III) The term “consumer product” means any personal property or service which is normally used for personal, family, or household purposes.

**(2) Special right of contribution**

To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant’s proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

**(3) Nondisclosure to jury**

The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

**(e) Settlement discharge****(1) In general**

A defendant who settles a Y2K action that is not a contract action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter an order constitut-

ing the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

**(2) Reduction**

If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

**(f) General right of contribution****(1) In general**

A defendant who is jointly and severally liable for damages in any Y2K action that is not a contract action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

**(2) Statute of limitations for contribution**

An action for contribution in connection with a Y2K action that is not a contract action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except that an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

**(g) More protective State law not preempted**

Nothing in this section preempts or supersedes any provision of State law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

(Pub. L. 106-37, §6, July 20, 1999, 113 Stat. 192.)

**§ 6606. Prelitigation notice****(a) In general**

Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff in a Y2K action shall send a written notice by certified mail (with either return receipt requested or other means of verification that the notice was sent) to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

**(b) Person to whom notice to be sent**

The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer if the prospective defendant is a corporation, to the managing partner if the prospective defendant is a partnership, to the proprietor if the prospective defendant is a sole proprietorship, or to a similarly-situated person if the prospective defendant is any other enterprise; or

(3) if the prospective defendant has designated a person to receive prelitigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

**(c) Response to notice**

**(1) In general**

Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

**(2) Willingness to engage in ADR**

The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

**(3) Inadmissibility**

A written statement required by this subsection is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

**(4) Presumptive time of receipt**

For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

**(5) Priority**

A prospective defendant receiving more than one notice under this section may give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

**(d) Failure to respond**

If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

**(e) Remediation period**

**(1) In general**

If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action or alternative dispute resolution before commencing a legal action against that prospective defendant.

**(2) Extension by agreement**

The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

**(3) Multiple extensions not allowed**

Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

**(4) Statutes of limitation, etc., tolled**

Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

**(f) Failure to provide notice**

If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff in its initial response to the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

**(g) Effect of contractual or statutory waiting periods**

In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

**(h) State law controls alternative methods**

Nothing in this section supersedes or otherwise preempts any State law or rule of civil pro-

cedure with respect to the use of alternative dispute resolution for Y2K actions.

**(i) Provisional remedies unaffected**

Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

**(j) Special rule for class actions**

For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

(Pub. L. 106-37, §7, July 20, 1999, 113 Stat. 196.)

REFERENCES IN TEXT

Section 3(7) of the Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (b)(3), is section 3(7) of Pub. L. 105-271, which was formerly set out in a note under section 1 of this title.

The Federal Rules of Evidence, referred to in subsec. (c)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (i), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**§ 6607. Pleading requirements**

**(a) Application with rules of civil procedure**

This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

**(b) Nature and amount of damages**

In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

**(c) Material defects**

In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

**(d) Required state of mind**

In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

(Pub. L. 106-37, §8, July 20, 1999, 113 Stat. 198.)

REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsec. (a), are contained in the Federal Rules of Civil Pro-

cedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**§ 6608. Duty to mitigate**

**(a) In general**

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure involved in the action.

**(b) Preservation of existing law**

The duty imposed by this section is in addition to any duty to mitigate imposed by State law.

**(c) Exception for intentional fraud**

Subsection (a) does not apply to damages suffered by reason of the plaintiff's justifiable reliance upon an affirmative material misrepresentation by the defendant, made by the defendant with actual knowledge of its falsity, concerning the potential for Y2K failure of the device or system used or sold by the defendant that experienced the Y2K failure alleged to have caused the plaintiff's harm.

(Pub. L. 106-37, §9, July 20, 1999, 113 Stat. 198.)

**§ 6609. Application of existing impossibility or commercial impracticability doctrines**

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this chapter shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

(Pub. L. 106-37, §10, July 20, 1999, 113 Stat. 199.)

**§ 6610. Damages limitation by contract**

In any Y2K action for breach or repudiation of contract, no party may claim, or be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

(Pub. L. 106-37, §11, July 20, 1999, 113 Stat. 199.)

**§ 6611. Damages in tort claims**

**(a) In general**

A party to a Y2K action making a tort claim, other than a claim of intentional tort arising independent of a contract, may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure involved in the action (other