

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