

plete 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 resumed, 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 be-

fore 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.)

Editorial Notes

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 institution¹ 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—

(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.)

Editorial Notes

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 responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) Proportionate liability

(1) Determination of responsibility

In any Y2K action that is not a contract action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with re-

spect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

(2) Contents of special interrogatories or findings

The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) Factors for consideration

In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

(c) Joint liability for specific intent or fraud

(1) In general

Notwithstanding subsection (a), the liability of a defendant in a Y2K action that is not a contract action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(2) Fraud; recklessness

(A) Knowing commission of fraud described

For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) Recklessness

For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

¹ So in original. Probably should be "institution".