

## THE Y2K ACT

The long-heralded Y2K Act is now officially the law of these United States. The Y2K Act is designed to promote remediation rather than litigation of *Y2K failures*.

Under the Y2K Act, a Y2K failure is a failure by any hardware or software to properly handle year 2000 date-related data. Now, in most cases, before anyone may commence litigation based on an actual or potential Y2K failure, they must first send each responsible vendor a *prelitigation notice*. Vendors include manufacturers and sellers of hardware and software along with service providers, including programmers and other developers.

A prelitigation notice must provide specific and detailed information about each of the following: (1) the manifestations of the Y2K failure, (2) the harm suffered, (3) the desired remedy, (4) the reasons for holding a vendor responsible for the Y2K failure, and (5) the name, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute.

After receiving a prelitigation notice, the vendor has 30 days to fix the Y2K failure or to propose a remedy. If a vendor accepts responsibility for the Y2K failure, the vendor will have an additional 60 days to fix it. If a vendor does not propose a remedy or fix the Y2K failure within the prescribed deadlines, the injured party may thereafter commence a lawsuit. However, even if the vendor fails or refuses to fix the Y2K problem, the injured party must still use reasonable efforts to either fix it or avoid using the hardware or software that is involved in the Y2K failure.

Many savvy vendors have inserted in written contracts with their clients provisions limiting the damages for Y2K failures and specifying the time period by which the vendor may fix a failure. The Y2K Act preserves those provisions.

The Y2K Act contains several complicated sections governing negligence and class action cases. One such provision apportions the damages amongst numerous vendors if more than one vendor causes the Y2K failure. In most cases involving multiple vendors, vendors who settle with the injured party may exit the case early and are then relieved from further liability. The Y2K Act also caps the amount of punitive damages in Y2K negligence cases when defendant is a small business (i.e., has fewer than 50 full time employees.) In those cases, punitive damages are "limited" to the lesser of three times the amount of compensatory damages or \$250,000. Finally, the Y2K Act

waives damages in some instances if the injured party is a federal agency and the vendor is a small business.

The Millennium approaches. Enjoy it!