

Committee on the Judiciary, House of Representatives, Congress of the United States
One-page Summary Statement by Leon A. Kappelman, Ph.D. (April 13, 1999)

What does H.R. 775 the “Year 2000 Readiness and Responsibility Act” really do and what are its potentially dire unintended consequences? The bill is largely designed to limit the penalties for those who fail to reduce and manage Y2K risks (corporate executives and high-tech manufacturers) and to protect those who are largely responsible for creating this costly Y2K problem (namely, much of high-tech industry, especially software manufacturers and other information technology (I/T) manufacturers).

In every other industry a defective product is recalled and replaced or repaired by the manufacturer. Other industries are subjected to “Lemon Laws” for regularly selling defective products. Manufacturers of everything from aspirin and automobiles, to hammocks, highchairs, and zwieback have been subject to costly recalls of products known to be defective, dangerous, or damaging. Are software manufacturers above the law? There is nothing special about software, or other high-tech products, or Y2K, that suggests that they deserve special treatment under the law. The “software is an art form” theory is just an excuse for the poor workmanship and shoddy products which have lead to debacles like this Y2K mess.

There are three kinds of provisions that risk some of the most dreadful unintended consequences, and in fact make H.R. 775 the “Y2K Anti-readiness and Ir-responsibility Act,” namely:

- (1) Liability limits on damages and executives: If enacted such provisions will punish consumers and business owners of all sizes by shifting to them the cost for the repairs made necessary by the poor programming and poor planning of those they depended upon in high-tech industries. Such laws will serve as incentives to NOT fix Y2K problems; moreover, they will condone hurting others so long as you do it with a computer.
- (2) Cooling-off periods: The result, from a business owner’s viewpoint, of a cooling-off period before a consumer can take legal action, is this: “The software company sold me a ‘Y2K compliant’ product, on January 1st 2000 it failed, I am going bankrupt, but the software company has more time to fix it.”
- (3) Data destruction exempted: Perhaps the potentially most devastating unintended consequences to the long-term economic well being of our country, and to the information economy, are provisions that exclude damages to data if you do it with non-Y2K-ready I/T product. Destroy data with a match or a scissors and you’re headed to jail, but do it with software and you’re off free.

Of course there is room for positive Y2K legislation, just not the kind that lets I/T or any other industries off the hook when they sell defective goods, and especially not when they refuse to stand behind their products. Imagine an analogy to the auto industry: Would Congress have passed a law in 1914 placing wide-ranging limitations on the liability of automobile manufacturers and drivers, for unspecified damages, that they might someday cause to others? Software and other high-tech goods should be treated like any other products. Please, do not legalize hurting others or committing crimes with high technology in the name of trying to help with Y2K problems or in the hopes of furthering general tort reforms. Y2K places far too much at risk already, and we have neither time nor resources to waste on such diversions.