refusing to sell them to device manufacturers. Why? Because suppliers no longer want to risk having to pay enormous legal fees to defend against product liability suits when those legal fees far exceed any profit they make from supplying materials for use in implantable devices.

Let me emphasize that I am speaking here about—and the bill addresses—the suppliers of raw materials and component parts—not about the companies that make the medical devices themselves. The materials these suppliers sell—things like resins and yarns—are basically generic materials that they sell for a variety of uses in many, many different products. Their sales to device manufacturers usually make up only a very small part of their market—often less than one percent. As a result—and because of the small amount of the materials that go into the implants—many of these suppliers make very little money from supplying implantable devices. Just as importantly, these suppliers generally have nothing to do with the design, manufacture or sale of the product.

But despite the fact that they generally have nothing to do with making the product, because of the common practice of suing everyone involved in any way with a product when something goes wrong, these suppliers sometimes get brought into lawsuits claiming problems with the implants. One company, for example, was hauled into 651 lawsuits involving 1,605 implant recipients based on a total of 5 cents worth of that company’s product in each implant. In other words, in exchange for selling less than $100 of its product, this supplier received a bill for perhaps millions of dollars of legal fees it spent in its ultimately successful effort to defend against these lawsuits.

No one would be surprised that such experiences should not surprise anyone. Even though not a single biomaterials supplier has ultimately been held liable so far—I mean that again: Not a single biomaterials supplier has ultimately been held liable so far—the message nevertheless is clear for anyone rational business. Why would any business stay in a market that yields them little profit, but exposes them to huge legal fees?

An April 1997 study of this issue found that 75 percent of suppliers surveyed were not willing to sell their raw materials to implant manufacturers under current conditions. That study predicts that unless this trend is reversed, patients whose lives depend on implantable devices may no longer have access to them.

What is at stake here, let me be clear, is not protecting suppliers from liability and not even just making raw materials available to the manufacturers of medical devices. Those things in and of themselves might not be enough to bring the manufacturers to the table. What is at stake is the health and lives of millions of Americans who depend on medical devices for their every day survival. What is at stake are the lives of children with hydrocephalus who rely on brain shunts to keep fluid from accumulating around their brains. What is at stake are the lives of adults whose hearts would stop beating without implanted automatic defibrillators. What is at stake are the lives of adults who need pacemakers because their hearts no longer generate enough of an electrical pulse to get their heart to beat. Without implants, none of these individuals could survive.

We must do something soon to deal with this problem. We simply cannot allow the current situation to continue to put at risk the millions of Americans who owe their health to medical devices.

Senator McCain, and I and the bill’s sponsors in the House have crafted what we think is a reasonable response to this problem. Our bill would do two things. First, with an important exception, it will talk about in a minute, the bill would immunize raw materials suppliers from the first product liability suits, unless the supplier falls into one of three categories: (1) the supplier also manufactured the implant alleged to have caused harm; (2) the supplier furnished the implant alleged to have caused harm; or (3) the supplier furnished raw materials or component parts that failed to meet applicable contractual requirements or specifications.

Second, the bill would provide suppliers with a mechanism for making that immunity meaningful by obtaining early dismissal from lawsuits. By guaranteeing suppliers in advance that they will not face unnecessary litigation costs, this bill should spur suppliers to remain in or come back to the biomaterials market, and so ensure that people who need implantable medical devices will still have access to them.

Now, it is important to emphasize that in granting this immunity, we would not be depriving anyone injured by a defective implantable medical device of the right to compensation for their injuries. Injured parties still will have their full rights against any one involved in the design, manufacture or sale of an implant, and they can sue implant manufacturers, or any other allegedly responsible party, and collect for their injuries from them if that party is at fault.

We also have added a new provision to this version of the bill, one that resulted from lengthy negotiations with representatives of the implant manufacturers, the American Trial Lawyers Association—ATLA—the White House and others. This provision responds to concerns that the previous version of the bill would have left injured implant recipients without a means of seeking compensation if the manufacturer or other responsible party is bankrupt or refuses to provide it. The new provision provides that in such cases, a plaintiff may bring the raw materials supplier back into a lawsuit after judgment if a court concludes that evidence exists to warrant holding the supplier liable.

Finally, let me add that the bill does not cover lawsuits involving silicone gel breast implants.

In short, Mr. President, the biomaterials bill is—and I am not engaging in hyperbole when I say this—and quite simply a matter of life and death for the millions of Americans who rely on implantable medical devices to survive. This bill would make sure that implant manufacturers still have access to the raw materials they need for their products, while at the same time ensuring that those injured by implants are able to get compensation for injuries caused by defective implants. This is a good bill, and I urge my colleagues to support it.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill be placed at the appropriate place in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 872) was considered read the third time and passed.

IDENTITY THEFT AND ASSUMPTION DETERRENCE ACT OF 1998

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 460, S. 512.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 512) to amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Identity Theft and Assumption Deterrence Act of 1998".

SEC. 2. IDENTITY THEFT.

(a) ESTABLISHMENT OF OFFENSE.—Section 1028(a) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking "or" at the end;
(2) in paragraph (6), by adding "or" at the end;
(3) in the flush matter following paragraph (6), by striking "or attempts to do so;"; and
(4) by inserting after paragraph (6) the following:

"(7) knowingly possesses, transfers, or uses, without lawful authority, a means of identification of another person with the intent to commit, or otherwise promote or facilitate, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.;"

(b) PENALTIES.—Section 1028(b) of title 18, United States Code, is amended—

(1) in paragraph (1)—
(A) in subparagraph (B), by striking "or" at the end; and
(B) in subparagraph (C), by adding "or" at the end; and
(C) by adding at the end the following:
"(D) an offense under paragraph (7) of such subsection that involves the transfer, possession, or use of 1 or more means of identification as a result of the offense, any individual committing the offense obtains anything of value aggregating $1,000 or more during any 1-year period;"
(2) in paragraph (2)(A), by striking "or transfer of an identification document or" and inserting "possess, transfer, or use of a means of identification, an identification document, or a";
(3) by striking paragraphs (3) and (4) and inserting the following:
"(3) IN GENERAL.—In this section that involves the transfer, possession, or use of 1 or more means of identification as a result of the offense, any individual committing the offense obtains anything of value aggregating $1,000 or more during any 1-year period;
(4) PERSONAL IDENTIFICATION CARD.—The term 'personal identification card' means an identification document issued by a State or local government solely for the purpose of identification;
(5) PRODUCE.—The term 'produce' includes a result of the offense, any individual committing the offense obtains anything of value aggregating $1,000 or more during any 1-year period;
"(4) AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR OFFENSES UNDER SECTION 1028.â€”
SEC. 2. AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.
SEC. 3. TECHNICAL AMENDMENTS TO TITLE 18, UNITED STATES CODE.—
(a) TECHNICAL CORRECTION RELATING TO CRIMINAL FORFEITURE PROCEDURES.—Section 982(b)(3) of title 18, United States Code, is amended to read as follows: "(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Crime Control Act of 1984; and
(b) ECONOMIC Espionage AND Theft OF TRADE SECRETS AS Predicate OFFENSES FOR WIRE INTERCEPTION.—Section 2518(1)(a) of the Code (title 18, United States Code, as amended by this Act) is amended by inserting "Chapter 90 (relating to protection of trade secrets)," after "to espionage,".
SEC. 4. AMENDMENT OF FEDERAL SENTENCING GUIDELINES FOR OFFENSES UNDER SECTION 1028.â€”
SEC. 5. CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF IDENTITY THEFT.—
SEC. 6. TECHNICAL AMENDMENTS TO TITLE 18, UNITED STATES CODE.—
(a) TECHNICAL Correction RELATING TO CRIMINAL FORFEITURE PROCEDURES.—Section 982(b)(3) of title 18, United States Code, is amended to read as follows: "(1) The forfeiture of property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the provisions of section 413 (other than subsection (d) of that section) of the Comprehensive Crime Control Act of 1984; and
(b) ECONOMIC Espionage AND Theft OF TRADE SECRETS AS Predicate OFFENSES FOR WIRE INTERCEPTION.—Section 2518(1)(a) of the Code (title 18, United States Code, as amended by this Act) is amended by inserting "Chapter 90 (relating to protection of trade secrets)," after "to espionage,".

Mr. JEFFORDS. Mr. President, the purpose of this bill, the Identity Theft and Assumption Deterrence Act, is to address one of the fastest growing crimes in America, identity theft. Losses related to identity theft have nearly doubled in the last two years. Today, 95% of federal credit crimes involve identity theft. Trans Union, one of the country’s three major credit bureaus, says calls to its fraud division have risen from 3,000 a month in 1992 to nearly 43,000 a month this year. This is more than a troubling trend. Indeed, with increasing frequency, criminals—sometimes part of an international criminal syndicate—are misappropriating personal information such as names, birth dates, and social security numbers. And while the results of the theft of identification information can be devastating for the victims, often costing a citizen thousands of dollars to clear his credit or good name, today the law recognizes neither the victim nor the crime.

The bill, as reported unanimously by the Judiciary Committee, does both. It recognizes the crime by making it unlawful to steal personal information, which can be virtual pieces of ourselves in the form of financial histories, having to engage credit bureaus, or even the use of a borrowed ID card without any legal purpose. This problem, and others, were addressed in the Kyl-Leahy substitute that was reported out of committee. Both changes were recommended by the Department of Justice to improve the bill through its redraftings to its present form that I would like to thank.

In conclusion, I also thank Senators LEAHY, HATCH and FEINSTEIN for lending their valuable support and input to this bill. 

Mr. LEAHY. Mr. President, I am pleased that the Senate today is adopting the Kyl-Leahy substitute amendment to Section 512, the “Identity Theft and Assumption Deterrence Act.” Protecting the privacy of our personal information is a challenge, especially in this information age. Every time we obtain or use a credit card, place a toll-free phone call, surf the Internet, get a driver’s license or are featured in Who’s Who, we are leaving a trail of our personal information, which can be used without our consent or even our knowledge. Too frequently, criminals are getting hold of this information and using the personal information of innocent individuals to carry out other crimes. Indeed, the Justice Department’s World Report has called identity theft “a crime of the 90’s”.

The consequences for the victims of identity theft can be severe. They can have their credit ratings ruined and be unable to get credit for cars, student loans, or mortgages. They can be hounded by creditors or collection agencies to repay debts they never incurred, but were obtained in their name, at their address, with their social security number or driver’s license number. It can take months or even years, and agonizing effort, to clear their good names and correct their credit histories. Indeed, in some instances, victims of identity theft have even been arrested for crimes they never committed when the actual perpetrators provided law enforcement officials with assumed names.

The new legislation provides important remedies for victims of identity theft. Specifically, it makes clear that these victims are entitled to restitution, including payment for any costs and attorney’s fees in clearing up their credit histories and having to engage in any civil or administrative proceedings to satisfy debts, liens or other obligations resulting from a defendant’s theft of their identity. In addition, the bill directs the Federal Trade Commission to establish a complaints center to provide information to victims of this crime on how to deal with its aftermath.

This is an important bill on an issue that has caused harm to many Americans. The committee has considered in its original formulation, which would have made it an offense, subject to 15 years’ imprisonment, to possess “with intent to deceive” identity information issued to another person. I was concerned that the scope of the proposed offense in the bill as introduced would have resulted in the federalization of innumerable state and local offenses, such as the status offenses of underage teenagers using fake ID cards to gain entrance to bars or to buy cigarettes, or even the use of a borrowed ID card without any illegal purpose. This problem, and others, were addressed in the Kyl-Leahy substitute that was reported out of the Committee and further refined in the substitute amendment the Senate considers today.

Since Committee consideration of this bill, we have continued to consult with the Department of Justice to improve the bill in several ways. Most significantly, the Kyl-Leahy substitute amendment appropriately limits the scope of the new offense governing the illegal transfer or use of another person’s “means of identification” to exclude “possession.” This change ensures that the bill does not inadvertently subject innocent conduct to the risk of serious federal criminal liability. For example, with this change, the bill would no longer raise the possibility of criminalizing the mere possession of another person’s name in an address book or Rolodex, when coupled with some sort of bad intent.

At the same time, the substitute restores the nuanced penalty structure of Section 1028, so that it continues to treat other significant offenses involving identification documents and document-making implements as misdemeanors. Thus, in the substitute, the use or transfer of 1 or more means of...
identification that results in the perpetrator receiving anything of value aggregating $1,000 or more over a 1-year period, would carry a penalty of a fine or up to 15 years' imprisonment, or both. The use or transfer of another person's identification information that does not satisfy these monetary and time period requirements, would carry a penalty of a fine and up to three years' imprisonment, or both.

Finally, again with the support of the Department of Justice, we specified the forfeiture procedure to be used in connection with offenses under section 1028. The bill as reported created a forfeiture penalty for these offenses; the addition of a procedure simply clarifies how that penalty is to be enforced.

I am glad that Senator Kyl and I were able to join forces to craft legislation that both punishes the perpetrators of identity theft and helps the victims of this crime.

Mr. HATCH. Mr. President, it is with pleasure that I rise today in support of S. 512, the “Identity Theft and Assumption Deterrence Act of 1998.” This measure has bipartisan support, and I am pleased to be an original co-sponsor along with Senators LEAHY, FEINSTEIN, DeWINE, BOND, LOTT, GRASSLEY, HARKIN, WARNER, MURKOWSKI and ROBB.

Identity theft is a crime that destroys the lives of thousands of innocent people each year. It occurs when an imposter, who has falsified or stolen personal information from another individual, uses the information to make financial transactions or conduct personal business in the name of another. This heinous crime often leaves victims with mountains of debt, ruins their credit history, and makes it difficult for the individuals to obtain employment. In short, it virtually takes over the lives of innocent citizens who find themselves trying to understand the trail of obligations they did not make or actions they did not commit.

Many of you know individuals who have been victims of this crime. These are people whose lives have been destroyed because a con-artist gained access to and used their personal data, such as their address, date of birth, mother's maiden name, or social security number. This is information that you and I are asked to verify every day in our jobs, and it is information that identity thieves are using to open bank and credit card accounts and to obtain bank and mortgage loans. These fake businesses and personal commitments and obligations can ruin a life.

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Currently, the applicable federal statute, Title 18 United States Code Section 1028, only criminalizes the possession, transfer, or production of identity documents. In other words, you have to catch the culprit with the actual documents in order to bring a prosecution for fraud. Obviously, such criminals are not always going to keep these documents once they have acquired the information they need. Many times criminals simply misappropriate the information itself to facilitate their criminal activity.

As there is no specific statute criminalizing the theft of the information, when the criminal is prosecuted, law enforcement must pursue more indirect charges such as check fraud, credit card fraud, mail fraud, wire fraud, or money laundering. Unfortunately, these statutes do little to compensate the victim or address the horror suffering the individual whose life has been invaded. Often these general criminal statutes treat only affected banks, credit bureaus, and other financial institutions as the victim, leaving the primary victim, the innocent person, without recourse to reclaim his or her life and identity.

S. 512 recognizes not only that it is a crime to steal personal information, and enhances penalties for such crimes, but it also recognizes the person, whose information has been stolen, as the real victim. Moreover, it gives the victim the ability to seek restitution and relief.

I believe this bill to be an important piece of legislation. It is supported by federal financial institutions, credit bureaus, banking associations, and other private entities. I urge all of my colleagues to join us and support the passage of this bill.

Mr. FEINSTEIN. Mr. President, I am proud to be an original cosponsor of the substitute version of S. 512, the Identity Theft and Assumption Deterrence Act of 1998, which the Senate is considering today.

On May 20, the Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information, on which I serve as Ranking Member, heard from victims of identity theft from both Subcommittee Chairman Kyl’s and my home states. The victims told cautionary tales of lives suddenly, and without warning, being invaded. Often these geniuses of identity theft are able to join forces to craft legislation that both punishes the perpetrators of identity theft and helps the victims of this crime.

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