

“(B) appears to be issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization;” and

(E) by inserting after paragraph (6), as redesignated (previously paragraph (5)), the following:

“(7) the term ‘transfer’ includes making available for acquisition or use by others; and”;

(6) by adding at the end the following:

“(i) EXCEPTION.—

“(1) IN GENERAL.—Subsection (a)(7) shall not apply to an interactive computer service used by another person to produce or transfer a document making implement in violation of that subsection except—

“(A) to the extent that such service conspires with such other person to violate subsection (a)(7);

“(B) if, with respect to the particular activity at issue, such service has knowingly permitted its computer server or system to be used to engage in, or otherwise aided and abetted, activity that is prohibited by subsection (a)(7), with specific intent of an officer, director, partner, or controlling shareholder of such service that such server or system be used for such purpose; or

“(C) if the material or activity available through such service consists primarily of material or activity that is prohibited by subsection (a)(7).

“(2) DEFINITION.—In this subsection, the term ‘interactive computer service’ means an interactive computer service as that term is defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)), including a service, system, or access software provider that—

“(A) provides an information location tool to refer or link users to an online location, including a directory, index, or hypertext link; or

“(B) is engaged in the transmission, storage, retrieval, hosting, formatting, or translation of a communication made by another person without selection or alteration of the content of the communication, other than that done in good faith to prevent or avoid a violation of the law.”.

#### SEC. 4. REPEAL.

Section 1738 of title 18, United States Code, is repealed.

#### SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

#### PRIVILEGE OF THE FLOOR

Mr. GRASSLEY. Mr. President, I ask unanimous consent that privileges of the floor be granted for Dr. Cate McClain, a fellow with the Aging Committee.

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

#### AUTHORIZING THE ENFORCEMENT BY STATE AND LOCAL GOVERNMENTS REGARDING FCC REGULATIONS REGARDING CITIZENS BAND RADIO EQUIPMENT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2346, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2346) to authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment.

There being no objection, the Senate proceeded to consider the bill.

#### AMENDMENT NO. 4354

Mr. GRASSLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Mr. FEINGOLD, for himself, Mr. ABRAHAM, and Mr. LEVIN, proposes an amendment numbered 4354.

The amendment reads as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. STATE AND LOCAL ENFORCEMENT OF FEDERAL COMMUNICATIONS COMMISSION REGULATIONS ON USE OF CITIZENS BAND RADIO EQUIPMENT.

Section 302 of the Communications Act of 1934 (47 U.S.C. 302a) is amended by adding at the end the following:

“(f)(1) Except as provided in paragraph (2), a State or local government may enact a statute or ordinance that prohibits a violation of the following regulations of the Commission under this section:

“(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

“(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

“(2) A station that is licensed by the Commission pursuant to section 301 in any radio service for the operation at issue shall not be subject to action by a State or local government under this subsection. A State or local government statute or ordinance enacted for purposes of this subsection shall identify the exemption available under this paragraph.

“(3) The Commission shall, to the extent practicable, provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

“(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government agency enforcing a statute or ordinance under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, enacted a statute or ordinance outside the authority provided in this subsection.

“(B) A person shall submit an appeal on a decision of a State or local government agency to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government agency becomes final, but prior to seeking judicial review of such decision.

“(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

“(D) If the Commission determines under subparagraph (C) that a State or local government agency has acted outside its author-

ity in enforcing a statute or ordinance, the Commission shall preempt the decision enforcing the statute or ordinance.

“(5) The enforcement of statute or ordinance that prohibits a violation of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

“(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.

“(7) The enforcement of a statute or ordinance by a State or local government under paragraph (1) with regard to citizens band radio equipment on board a ‘commercial motor vehicle’, as defined in section 31101 of title 49, United States Code, shall require probable cause to find that the commercial motor vehicle or the individual operating the vehicle is in violation of the regulations described in paragraph (1).”.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be agreed to, the bill be considered read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4354) was agreed to.

The bill (H.R. 2346), as amended, was read the third time and passed.

#### INTERNET FALSE IDENTIFICATION PREVENTION ACT OF 2000

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 861, which is S. 2924.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2924) to strengthen enforcement of Federal statutes relating to false identification, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment, as follows:

[Strike out all after the enacting clause and insert the part printed in italic.]

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the “Internet False Identification Prevention Act of 2000”.*

#### SEC. 2. SPECIAL TASK FORCE ON FALSE IDENTIFICATION.

(a) IN GENERAL.—*The Attorney General and the Secretary of the Treasury shall establish a task force to investigate and prosecute the creation and distribution of false identification documents.*

(b) MEMBERSHIP.—*The task force shall consist of the Secret Service, the Federal Bureau of Investigation, the Department of Justice, the Social Security Administration, and the Immigration and Naturalization Service.*

(c) TERM.—*The task force shall terminate 2 years after the effective date of this Act.*

(d) AUTHORIZATION OF APPROPRIATIONS.—*There are authorized to be appropriated such sums as are necessary to carry out this section.*

**SEC. 3. FALSE IDENTIFICATION.**

Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)—  
(A) in paragraph (6), by striking “or” after the semicolon;

(B) in paragraph (7), by inserting “or” after the semicolon; and

(C) by adding after paragraph (7) the following:

“(8) knowingly produces or transfers a document-making implement that is designed for use in the production of a false identification document.”;

(2) in subsection (b)(2)(B), by striking “or (7)” and inserting “, (7), or (8)”;

(3) in subsection (c)(3)(A), by inserting “, including the making available of a document by electronic means” after “commerce”; and

(4) in subsection (d)—  
(A) in paragraph (1), by inserting “template, computer file, computer disc,” after “impression,”;

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively;

(C) by inserting after paragraph (2) the following:

“(3) the term ‘false identification document’ means an identification document of a type intended or commonly accepted for the purposes of identification of individuals that—

“(A) is not issued by or under the authority of a governmental entity; and

“(B) appears to be issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization;”;

(D) in paragraph (6), as redesignated (previously paragraph (5)), by inserting “, including making available for acquisition or use by others” after “assemble”.

**SEC. 4. REPEAL.**

Section 1738 of title 18, United States Code, is repealed.

**SEC. 5. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

AMENDMENT NO. 4355

Mr. GRASSLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for Ms. COLLINS, for herself and Mrs. FEINSTEIN, proposes an amendment numbered 4355.

The amendment reads as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Internet False Identification Prevention Act of 2000”.

**SEC. 2. COORDINATING COMMITTEE ON FALSE IDENTIFICATION.**

(a) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall establish a coordinating committee to ensure, through existing interagency task forces or other means, that the creation and distribution of false identification documents is vigorously investigated and prosecuted.

(b) MEMBERSHIP.—The coordinating committee shall consist of the Secret Service, the Federal Bureau of Investigation, the Department of Justice, the Social Security Administration, and the Immigration and Naturalization Service.

(c) TERM.—The coordinating committee shall terminate 2 years after the effective date of this Act.

**(d) REPORT.—**

(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the committee, shall report to the Committees on the Judiciary of the Senate and House of Representatives on the activities of the committee.

(2) CONTENTS.—The report referred in paragraph (1) shall include—

(A) the total number of indictments and informations, guilty pleas, convictions, and acquittals resulting from the investigation and prosecution of the creation and distribution of false identification documents during the preceding year;

(B) identification of the Federal judicial districts in which the indictments and informations were filed, and in which the subsequent guilty pleas, convictions, and acquittals occurred;

(C) specification of the Federal statutes utilized for prosecution;

(D) a brief factual description of significant investigations and prosecutions; and

(E) specification of the sentence imposed as a result of each guilty plea and conviction.

**SEC. 3. FALSE IDENTIFICATION.**

Section 1028 of title 18, United States Code, is amended—

**(1) in subsection (a)—**

(A) in paragraph (6), by striking “or” after the semicolon;

(B) by redesignating paragraph (7) as paragraph (8); and

(C) by inserting after paragraph (6) the following:

“(7) knowingly produces or transfers a document-making implement that is designed for use in the production of a false identification document; or”;

(2) in subsection (b)(1)(D), by striking “(7)” and inserting “(8)”;

(3) in subsection (b)(2)(B), by striking “or (7)” and inserting “, (7), or (8)”;

(4) in subsection (c)(3)(A), by inserting “, including the making available of a document by electronic means” after “commerce”;

**(5) in subsection (d)—**

(A) in paragraph (1), by inserting “template, computer file, computer disc,” after “impression,”;

(B) by redesignating paragraph (6) as paragraph (8);

(C) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively;

(D) by inserting after paragraph (2) the following:

“(3) the term ‘false identification document’ means an identification document of a type intended or commonly accepted for the purposes of identification of individuals that—

“(A) is not issued by or under the authority of a governmental entity; and

“(B) appears to be issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization;”;

(E) by inserting after paragraph (6), as redesignated (previously paragraph (5)), the following:

“(7) the term ‘transfer’ includes making available for acquisition or use by others; and”;

(6) by adding at the end the following:

**“(i) EXCEPTION.—**

“(1) IN GENERAL.—Subsection (a)(7) shall not apply to an interactive computer service used by another person to produce or transfer a document making implement in violation of that subsection except—

“(A) to the extent that such service conspires with such other person to violate subsection (a)(7);

“(B) if, with respect to the particular activity at issue, such service has knowingly permitted its computer server or system to be used to engage in, or otherwise aided and abetted, activity that is prohibited by subsection (a)(7), with specific intent of an officer, director, partner, or controlling shareholder of such service that such server or system be used for such purpose; or

“(C) if the material or activity available through such service consists primarily of material or activity that is prohibited by subsection (a)(7).

“(2) DEFINITION.—In this subsection, the term ‘interactive computer service’ means an interactive computer service as that term is defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)), including a service, system, or access software provider that—

“(A) provides an information location tool to refer or link users to an online location, including a directory, index, or hypertext link; or

“(B) is engaged in the transmission, storage, retrieval, hosting, formatting, or translation of a communication made by another person without selection or alteration of the content of the communication, other than that done in good faith to prevent or avoid a violation of the law.”.

**SEC. 4. REPEAL.**

Section 1738 of title 18, United States Code, is repealed.

**SEC. 5. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

Ms. COLLINS. Mr. President, I am pleased that the Senate is now considering legislation I introduced to stem the proliferation of websites that distribute counterfeit identification documents and credentials over the Internet. I appreciate the timely action on this legislation by the chairman of the Judiciary Committee, Senator HATCH, as well as the support and assistance of Senators KYL, LEAHY, and FEINSTEIN. The substitute amendment proposed by Senator FEINSTEIN and me improves the bill while retaining all of its key features.

After this measure becomes law, Internet commerce in computer discs, files, and templates designed for use in the production of false identification documents will be illegal. The bill will also outlaw the practice of producing false identification containing easily removable disclaimers, a method currently used to avoid prosecution. Finally, the legislation will establish a coordinating committee to concentrate resources of several federal agencies on investigating and prosecuting the creation of false identification. I authored this legislation after the Permanent Subcommittee on Investigations, which I chair, held hearings on a disturbing new trend—the use of the

Internet to manufacture and market counterfeit identification documents and credentials. Our hearing and investigation revealed the widespread availability on the Internet of a variety of fake identification documents and computer templates that allow individuals to manufacture authentic-looking IDs in the seclusion of their own homes. The Internet False Identification Prevention Act of 2000 will strengthen current law to prevent the distribution of false identification documents over the Internet and make it easier to prosecute this criminal activity.

Mr. President, the high quality of the counterfeit identification documents that can be obtained through the Internet is astounding. With little difficulty, my staff was able to use Internet materials to manufacture convincing IDs that would allow me to pass as a member of our Armed Forces, a reporter, a student at Boston University, or a licensed driver in Florida, Michigan, or Wyoming, to name just a few of the identities I could assume. For instance, using the Internet my staff created a counterfeit Connecticut driver's license that is virtually identical to an authentic license issued by the Connecticut Department of Motor Vehicles. Just like the real Connecticut license, this fake with my picture includes a signature written over the picture and an adjacent "shadow picture" of the license holder. The State of Connecticut added both of these sophisticated security features to the license in order to reduce counterfeiting. Unfortunately, some websites offer to sell fake IDs complete with State seals, holograms, and bar codes to replicate a license virtually indistinguishable from the real thing. Thus, technology now allows website operators to copy authentic identification documents with an extraordinary level of sophistication and then mass produce those fraudulent documents for their customers. The websites investigated by the subcommittee offer a vast and varied product line, ranging from driver's licenses to military identification cards to federal agency credentials, including those of the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). Other sites offer to produce Social Security cards, birth certificates, diplomas, and press credentials.

Testimony before the subcommittee demonstrated that the availability of false identification documents from the Internet is a growing problem. Special Agent David Myers, Identification Fraud Coordinator of the State of Florida's Division of Alcoholic Beverages and Tobacco, testified that 2 years ago only 1 percent of false identification documents came from the Internet. Last year, he testified, a little less than 5 percent came from the Internet. Now he estimates that about 30 percent

of the false identification documents he seizes comes from the Internet. He predicts that by next year his unit will find at least 60 to 70 percent of the false identification documents they seize will come from the Internet. The General Accounting Office (GAO) and the FBI have both confirmed the findings of the subcommittee's investigation. Earlier this year the GAO used counterfeit credentials and badges, readily available for purchase on the Internet, to breach the security at 19 federal buildings and two commercial airports. GAO's findings demonstrate that, in addition to the poor security measures at federal facilities, the Internet and computer technology allow nearly anyone to create convincing identification cards and credentials. The FBI has also focused on the potential for misuse of official identification, and recently executed search warrants at the homes of several individuals who had been selling federal law enforcement badges over the Internet.

In response to these findings, the House has passed legislation that will complement the provisions in the bill we currently have under consideration. H.R. 4827, the Enhanced Federal Security Act of 2000, was introduced by Congressman STEVE HORN, and would make it a crime to enter federal property under false pretenses or for an unauthorized individual to traffic in genuine or counterfeit police badges. The House bill, supported by Congressman MCCOLLUM, chairman of the House Judiciary Subcommittee on Crime, provides an additional measure to curb the use of false identification, and I hope that the Senate will approve it along with S. 2924.

Mr. President, the Internet is a revolutionary tool of commerce and communication that benefits us all. But many of the Internet's greatest attributes also further its use for criminal purposes. While the manufacture of false identification documents by criminals is nothing new, the Internet allows those specializing in the sale of counterfeit identification to reach a broader market of potential buyers than they ever could by standing on a street corner in a shady part of town. They can sell their products with virtual anonymity through the use of e-mail services and free Web hosting services, and by providing false information when registering their domain names. Similarly, the Internet allows criminals to obtain fake IDs in the privacy of their own homes, substantially diminishing the risk of apprehension that attends purchasing counterfeit documents on the street. Because this is a relatively new phenomenon, there are no good data on the size of the false identification industry or the growth it has experienced as a result of the Internet. The subcommittee's investigation, however, found that some Web site op-

erators apparently have made hundreds of thousands of dollars through the sale of phony identification documents. One website operator that we investigated told a state law enforcement official that he sold approximately 1,000 fake IDs every month and generated about \$600,000 in annual sales.

Identity theft is a growing problem that these Internet sites encourage. Recent testimony by the Federal Trade Commission noted that the number of calls to their ID theft hotline had doubled between March and July of this year, that the agency was receiving between 800 and 850 calls a week, and that their phone counselors had handled more than 20,000 calls in an 8-month period earlier this year. Fake IDs, however, facilitate a broader array of criminal conduct. The subcommittee's investigation found that some Internet sites were used to obtain counterfeit identification documents for the purpose of committing other crimes, ranging from very serious offenses such as bank fraud to the more common problem of underage teenagers buying alcohol or gaining access to bars. The legislation under consideration today is designed to address the problem of counterfeit identification documents in several ways. The central features of the bill are provisions that modernize existing law to address the widespread availability of false identification documents on the Internet.

First, the legislation strengthens federal law against false identification to ensure that it is suited to the Internet age and the technology associated with it. The primary law prohibiting the use and distribution of false identification documents was enacted in 1982. Advances in computer technology and the use of the Internet may have rendered the law inadequate to encompass the technology of the present day. This bill will clarify that current law prohibits the sale or distribution of false identification documents through computer files and templates, which our investigation found are the vehicles of choice for manufacturing fake IDs in the Internet age.

Second, the legislation will make it easier to prosecute those criminals who manufacture, distribute or sell counterfeit identification documents by ending the practice of using easily removable disclaimers as part of an attempt to shield the illegal conduct from prosecution through a bogus claim of "novelty." No longer will it be acceptable to provide computer templates of government-issued identification containing an easily removable layer saying it is not a government document.

For instance, the subcommittee staff purchased a fake Oklahoma driver's license as part of an undercover operation conducted during our investigation. The fake license appears to bear the disclaimer, "Not a Government

Document," which is required by federal law. We found, however, that with one simple snip of the scissors, the fake ID could be removed from his laminated pouch, effectively discarding the disclaimer. It will no longer be acceptable under my bill to sell a false identification document in this fashion.

Finally, my legislation seeks to encourage more aggressive enforcement by dedicating investigative and prosecutorial resources to this emerging problem. The bill establishes a multi-agency coordinating committee that will concentrate the investigative and prosecutorial resources of several agencies with responsibility for enforcing laws that criminalize the manufacture, sale, and distribution of counterfeit identification documents. While the new provisions are intended to cover any individual or entity using a computer disc, file, template, or the Internet to produce, transfer or make available false identification documents or document-making implements, the substitute bill makes clear that the new offense does not cover companies providing interactive computer services, such as Internet service providers, communications facilities, or electronic mail services, who are innocent conduits of false identification documents. Just as the counterfeiting laws do not cover an unknowing provider of a device or service used to manufacture or transmit counterfeit money, the provisions in this legislation are not meant to apply to unknowing parties whose devices or services are used in the production or transfer of false identification documents. This exception is inapplicable, however, and ordinary common law doctrines of criminal liability will apply in cases of conspiracy between the interactive computer service and the user; knowledge of and specific intent of an officer, director, partner or controlling shareholder that the server or system be used for this criminal purposes; or when the material available through a service consists primarily of material that is covered by the new offense in this legislation.

This bill is one in a line of bills that have been considered by Congress in recent years that address the issue of service provider liability relevant to the unlawful conduct of third parties. These have ranged from bills dealing with the liability of service providers in cases of defamation suits, to copyright infringement actions, to criminal prosecutions for online drug trafficking, Internet gambling, and in this case, online distribution of false identification document-making implements. Through these bills, Congress has had to consider the complexities of the particular area of law at hand, the application of common law doctrines, such as respondent superior and theories of contributory and vicarious liability, and the nature of liability with respect

to specific violations in both civil and criminal contexts. In short, I believe that my bill, while addressing a number of these issues, does not necessarily set a standard for Congress to follow when considering the issue of service provider liability in future bills, in future contexts.

Mr. President, our investigation established that federal law enforcement officials have failed to devote the necessary resources and attention to this serious problem. By striking at the purveyors of false identification materials, I believe we can reduce the end-use crime that often depends upon the availability of counterfeit identification. For instance, the convicted felon who testified at the subcommittee's hearing said that he would not have been able to commit bank fraud had he not been able to easily and quickly obtain high quality, fraudulent identification documents over the Internet. I am confident that, if federal law enforcement officials prosecute the most blatant violators of the law, the false ID industry on the Internet will wither in short order. By strengthening the law and by focusing our prosecution efforts, I believe that we can curb the widespread availability of false identification documents that the Internet encourages. The Director of the United States Secret Services testified at our hearing that the use of fraudulent identification documents and credentials almost always accompanies the serious financial crimes that they investigate. Thus, I believe that a stronger law against making false identification documents will deter criminal activity in other areas as well. I urge my colleagues to support S. 2924.

I ask unanimous consent to have print in the RECORD a brief section-by-section summary of the substitute for S. 2924.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INTERNET FALSE IDENTIFICATION PREVENTION ACT OF 2000 (COLLINS/FEINSTEIN SUBSTITUTE)—SECTION-BY-SECTION SUMMARY

Section 1 names the bill as the Internet False Identification Prevention Act of 2000.

Section 2 establishes a coordinating committee to ensure the vigorous investigation and prosecution of the creation and distribution of false identification documents. The coordinating committee, appointed by the Attorney General and the Secretary of the Treasury, shall consist of the Secret Service, the Federal Bureau of Investigation, the Department of Justice, the Social Security Administration, and the Immigration and Naturalization Service, and shall exist for two years. The coordinating committee will focus investigative and prosecutorial resources of the federal agencies concerned with false identification in order to curb this growing problem, and will report the results of agency actions each year.

Section 3 will amend 18 U.S.C. §1028 to modernize the primary federal law pertaining to false identification documents. The bill modifies the existing definition of "document-making implement" to include

computer templates and files that are now frequently used to create counterfeit identification documents from the Internet.

A new provision will make it illegal to "knowingly produce or transfer a document making implement that is designed for use in the production of a false identification document." This provision will close a loophole which currently allows a person to transfer, through a Web site or e-mail, false identification templates that can easily be made into actual finished documents. Current law will also be amended to cover, in addition to documents used in interstate or foreign commerce, any document made available by "electronic means." This will ensure that a false identification document offered for download on a Web site is captured by the statute. Innocent third parties, such as Internet service providers or transmission companies, are excluded from coverage under the legislation.

Finally, this section will provide for the first time a definition of "false identification document." A "false identification document" will be defined as a document that is intended or commonly accepted for the purpose of identification which is not issued by or under the authority of a government, but which appears to be issued by or under the authority of any government entity. This provision, in conjunction with the removal of the disclaimer provision below, will make it clear that it is illegal for anyone but a government entity to produce any document that is commonly accepted for legal identification.

Section 4 will repeal 18 U.S.C. §1738, thus ending the ability to use a disclaimer and legally produce identification documents that include the age or birth date of an individual. Repealing Section 1738 will prohibit the practice, which was frequently encountered during the Subcommittee's investigation, of attempting to avoid criminal liability for manufacturing and selling counterfeit identification products by displaying a "NOT A GOVERNMENT DOCUMENT" disclaimer. This type of disclaimer can be fashioned so as to be easily removable on both computer templates and counterfeit identification documents. It will now be illegal to produce or sell any document that resembles a government identification document.

Section 5 will make the provisions effective 90 days after enactment.

Mr. LEAHY. Mr. President, the Internet False Identification Prevention Act, S. 2924, is intended to provide additional tools to law enforcement to combat the theft of, and fraud associated with, identification documents and credentials. I share the concerns of the sponsors of this legislation over this matter. In fact, in the last Congress, I sponsored, along with Senators KYL, HATCH, FEINSTEIN and others, legislation to prohibit fraud in connection with identification information, not just physical documents. We recognized that criminals do not necessarily need a physical identification document to create a new identity; they just need the information itself to facilitate the creation of false identification documents.

I note that improvements to the bill as originally introduced were made during consideration of the legislation by the Senate Judiciary Committee. Specifically, as originally introduced

this bill would have made it a crime to possess with intent to use or transfer any false identification document, rather than "five or more" as required under current law. See 18 U.S.C. 1028(a)(3). I raised concern that the scope of this proposed offense would have resulted in the federalization of the status offenses of an underage teenager using a single fake ID card. The substitute bill reported by the Judiciary Committee eliminated this change in current law.

The substitute amendment that the Senate considers today would require the Attorney General and the Secretary of the Treasury to coordinate through a "coordinating committee" the investigation and prosecution of offenses related to false identification documents, and report to the Judiciary Committees of the House and the Senate on the number and results of prosecutions. In addition, the substitute amendment amends 18 U.S.C. 1028 in a number of ways, including by creating a new criminal prohibition on the knowing production or transfer of a document-making implement designed for use in the production of false identification documents. A new definition is provided for the term "transfer" to include "making available for acquisition or use by others." To address the concerns of internet service providers that the combination of the new crime and the new definitions would expose them to criminal liability, the bill also includes an exemption from the new crime for an interactive computer service.

In addition, the bill repeals 18 U.S.C. 1738, which allows businesses that sell identification documents bearing the birth date or age of the person being identified to avoid criminal liability by printing clearly and indelibly on both the front and the back "Not a Government Document."

While I do not object to moving this bill at this time, I must note two lingering concerns that we have to revisit. First, I appreciate that the sponsors wish to repeal 18 U.S.C. 1738 to stop the practice of selling counterfeit identification products with disclaimers that are intentionally fashioned to be easily removable on both computer templates and counterfeit identification documents but that nevertheless avoid criminal liability by displaying the disclaimer. This is a practice that deserves congressional attention, but I am concerned that repeal of this section may go too far, since it may remove legal protection for some legitimate businesses that sell identification documents for legitimate reasons, such as for security or private guard services.

The legislative history of section 1738 makes clear that this provision was considered necessary when passed because private identification documents "are used by many persons who have

no official record of their date of birth and are unable to obtain official identification cards for that reason. The conferees determined that to simply require privately issued identification cards to carry a prominent disclaimer that they are not government documents would adequately protect the public interest." Conference Report on False Identification Crime Control Act of 1982 (H.R. 6946), 97th Cong., 2d Sess., Rpt. 97-975, at p. 4 (December 17, 1982). It remains unclear to me how many legitimate uses and businesses will be affected by repeal of this section, and the manner in which this repeal is being enacted makes it impossible to know in advance.

Second, the substitute amendment contains an exemption for interactive computer services that was added after consideration by the Judiciary Committee. Representatives of internet service providers expressed concern that the breadth of the intent standard in the bill, which provides that a defendant need only knowingly transfer or make available by electronic means an illegal document-making implement, such as computer template, to risk criminal liability. They contend that this scienter requirement could put at risk ISPs that simply offer a third party the ability to communicate or locate material that is otherwise illegal, even though the ISP does not know that the document-making implement can be or will be used to make false identification documents and does not intend to be facilitating an illegal transaction.

The ISPs may have correctly pointed out a problem in the scope of the criminal liability but the cure should not be to grant a blanket exemption for service providers. There is no comparable exemption anywhere else in the federal criminal code. A better cure would have been to clarify the scope of the criminal prohibition and to define more precisely the scienter requirement for criminal liability. Instead of making the new crime applicable to anyone who "knowingly produces or transfers a document-making implement that is designed for use in the production of a false identification document," the bill could have been more precisely drawn to cover only a person who "knowingly produces or transfers a document-making implement with the intent that it be used in the production of a false identification document." This would have avoided the necessity of carving out exemptions for innocent ISPs that merely facilitate the transfer of illegal document-making implements, without knowing the nature of the what is being transferred.

Moreover, including an immunity provision in this bill for ISPs raises a question about their criminal liability exposure under many other criminal statutes that make illegal the knowing transfer of illegal materials without

requiring specific knowledge on the part of the transferor that the material is illegal. For example, federal law prohibits the knowing distribution, including by computer, of any material that contains child pornography. 18 U.S.C. 2251A(a)(2)(B). There is no blanket immunity for ISPs for facilitating the distribution of such illegal material. Will inclusion of a blanket immunity provision in this bill encourage courts to construe broadly the prohibitions in other statutes to cover innocent ISPs? This is a matter that could benefit from additional scrutiny.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the amendment be agreed to, the committee substitute amendment be agreed to, the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4355) was agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2924), as amended, was passed, as follows:

S. 2924

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Internet False Identification Prevention Act of 2000".

**SEC. 2. COORDINATING COMMITTEE ON FALSE IDENTIFICATION.**

(a) **IN GENERAL.**—The Attorney General and the Secretary of the Treasury shall establish a coordinating committee to ensure, through existing interagency task forces or other means, that the creation and distribution of false identification documents is vigorously investigated and prosecuted.

(b) **MEMBERSHIP.**—The coordinating committee shall consist of the Secret Service, the Federal Bureau of Investigation, the Department of Justice, the Social Security Administration, and the Immigration and Naturalization Service.

(c) **TERM.**—The coordinating committee shall terminate 2 years after the effective date of this Act.

(d) **REPORT.**—

(1) **IN GENERAL.**—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the committee, shall report to the Committees on the Judiciary of the Senate and House of Representatives on the activities of the committee.

(2) **CONTENTS.**—The report referred in paragraph (1) shall include—

(A) the total number of indictments and informations, guilty pleas, convictions, and acquittals resulting from the investigation and prosecution of the creation and distribution of false identification documents during the preceding year;

(B) identification of the Federal judicial districts in which the indictments and informations were filed, and in which the subsequent guilty pleas, convictions, and acquittals occurred;

(C) specification of the Federal statutes utilized for prosecution;

(D) a brief factual description of significant investigations and prosecutions; and

(E) specification of the sentence imposed as a result of each guilty plea and conviction.

### SEC. 3. FALSE IDENTIFICATION.

Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking “or” after the semicolon;

(B) by redesignating paragraph (7) as paragraph (8); and

(C) by inserting after paragraph (6) the following:

“(7) knowingly produces or transfers a document-making implement that is designed for use in the production of a false identification document; or”;

(2) in subsection (b)(1)(D), by striking “(7)” and inserting “(8)”;

(3) in subsection (b)(2)(B), by striking “or (7)” and inserting “, (7), or (8)”;

(4) in subsection (c)(3)(A), by inserting “, including the making available of a document by electronic means” after “commerce”;

(5) in subsection (d)—

(A) in paragraph (1), by inserting “template, computer file, computer disc,” after “impression,”;

(B) by redesignating paragraph (6) as paragraph (8);

(C) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively;

(D) by inserting after paragraph (2) the following:

“(3) the term ‘false identification document’ means an identification document of a type intended or commonly accepted for the purposes of identification of individuals that—

“(A) is not issued by or under the authority of a governmental entity; and

“(B) appears to be issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization;”;

(E) by inserting after paragraph (6), as redesignated (previously paragraph (5)), the following:

“(7) the term ‘transfer’ includes making available for acquisition or use by others; and”;

(6) by adding at the end the following:

“(i) EXCEPTION.—

“(1) IN GENERAL.—Subsection (a)(7) shall not apply to an interactive computer service used by another person to produce or transfer a document making implement in violation of that subsection except—

“(A) to the extent that such service conspires with such other person to violate subsection (a)(7);

“(B) if, with respect to the particular activity at issue, such service has knowingly permitted its computer server or system to be used to engage in, or otherwise aided and abetted, activity that is prohibited by subsection (a)(7), with specific intent of an officer, director, partner, or controlling shareholder of such service that such server or system be used for such purpose; or

“(C) if the material or activity available through such service consists primarily of material or activity that is prohibited by subsection (a)(7).

“(2) DEFINITION.—In this subsection, the term ‘interactive computer service’ means an interactive computer service as that term

is defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)), including a service, system, or access software provider that—

“(A) provides an information location tool to refer or link users to an online location, including a directory, index, or hypertext link; or

“(B) is engaged in the transmission, storage, retrieval, hosting, formatting, or translation of a communication made by another person without selection or alteration of the content of the communication, other than that done in good faith to prevent or avoid a violation of the law.”.

### SEC. 4. REPEAL.

Section 1738 of title 18, United States Code, is repealed.

### SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

## EXPRESSING THE SENSE OF CONGRESS REGARDING ACTIONS OF THE UNITED STATES GOVERNMENT REGARDING CLAIMS OF FORMER MEMBERS OF THE ARMED FORCES AGAINST JAPANESE COMPANIES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 158 submitted by Senator HATCH.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 158) expressing the sense of Congress regarding appropriate actions of the U.S. Government to facilitate the settlement of claims of former members of the Armed Forces against Japanese companies that profited from the slave labor that those personnel were forced to perform for those companies as POWs of Japan during World War II.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HATCH. I rise today with my cosponsors, Senators FEINSTEIN and BINGAMAN, in support of a sense of the Senate resolution to encourage the U.S. Government, through the State Department or other appropriate offices, to use its best efforts to open a dialog between former American POWs forced into slave labor in Japan and the private Japanese companies that profited from their labor. This is a very important issue to our veterans and I think they deserve our help.

On April 9, 1942, Allied forces in the Philippines surrendered Bataan to the Japanese. Ten to twelve thousand American soldiers were forced to march some 60 miles in broiling heat in a deadly trek known as the Bataan Death March. Following a lengthy internment under horrific conditions, thousands of POWs were shipped to Japan in the holds of freighters known as “Hell Ships.” Once in Japan, many of these POWs were forced into slave labor for private Japanese steel mills

and other private companies until the end of the war.

Fifty years have passed since the atrocities occurred, yet our veterans are still waiting for accountability and justice. Unfortunately, global political and security needs of the time often overshadowed their legitimate claims for justice—and these former POWs were once again asked to sacrifice for their country. Following the end of the war, for example, our government allegedly instructed many of the POWs held by Japan not to discuss their experiences and treatment. Some were even asked to sign nondisclosure agreements. Consequently, many Americans remain unaware of the atrocities that took place and the suffering our POWs endured.

Following the passage of a California statute extending the statute of limitations for World War II claims until 2010 and the recent litigation involving victims of Holocaust, a new effort is underway by the former POWs in Japan to seek compensation from the private companies which profited from their labor. Let me say at the outset, that this is not a dispute with the Japanese people and these are not claims against the Japanese Government. Rather, these are private claims against the private Japanese companies that profited from the slave labor of our American soldiers who they held as prisoners. These are the same types of claims raised by survivors of the Holocaust against the private German corporations who forced them into labor.

The Senate Judiciary Committee held a hearing on the claims being made by the former American POWs against the private Japanese companies. One issue of concern for the Committee was whether the POWs held in Japan are receiving an appropriate level of advocacy from the U.S. Government. In the Holocaust litigation, the United States appropriately played a facilitating role in discussions between the German companies and the victims. The Justice Department also declined to file a statement of interest in the litigation—even when requested by the court. The efforts of the administration were entirely appropriate and the settlement, which was just recently finalized, was an invaluable step toward moving forward from the past.

Here, in contrast, there has been no effort by our Government, through the State Department or otherwise, to open a dialog between the Japanese and the former POWs. Moreover, in response to a request from the court, the Justice Department did, in fact, file two statements of interest which were very damaging to the claims of the POWs—stating in essence that their claims were barred by the 1951 Peace Treaty with Japan and the War Claims Act.

From a moral perspective, the claims of those forced into labor by private