in the Commonwealth of Virginia, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DORGAN:

S. 306. A bill entitled the ''Television Violence Reduction Through Parental Empowerment Act of 1995''; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY:

S. 307. A bill to require the Secretary of the Treasury to design and issue new counterfeit-resistant $100 currency; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SIMPSON (for himself, Mr. ROCKEFELLER, Mr. THURMOND, Mr. MURKOWSKI, Mr. JEFFORDS, Mr. CRAIG, Mr. GRAHAM, and Mr. AKAKA):

S.J. Res. 26. A joint resolution designating April 9, 1995, and April 9, 1996, as ''National Former Prisoner of War Recognition Day''; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself and Mr. WELLSTONE):

S. 298. A bill to establish a comprehensive policy with respect to the provision of health care coverage and services to individuals with severe mental illnesses, and for other purposes; to the Committee on Labor and Human Resources.

THE EQUITABLE HEALTH CARE FOR SEVERE MENTAL ILLNESS ACT OF 1995

Mr. DOMENICI. Mr. President, today I rise to introduce a bill I have introduced in the past, and which has always attracted the support and encouragement of a wide variety of my distinguished colleagues. This bill is called the Equitable Health Care for Severe Mental Illness Act of 1995. It was written because a situation exists in this country that I believe cannot continue, and this situation impacts upon some of the most vulnerable individuals in society. I am speaking of the those individuals who have been diagnosed as having a severe mental illness.

For so long, society shunned these individuals out of fear, ignorance, or misunderstanding, and the afflicted and their families suffered in silence. Because society didn't know what caused these illnesses, they could only assume that the strange and perplexing behavior was the result of some action; a punishment for some sin; or a weakness or frailty in character. In the past, those suffering from mental illness were locked up, tried as witches, or banished from society for being possessed by demons or evil spirits. As late as 1972 in this country, many States singled out the mentally ill, institutionalized them, and subjected them to systematic sterilization, often without their consent or knowledge. Ignorance of these illnesses bred contempt, and the sick were seen as criminals. Some just say, ''why don't they just stop acting that way?''

Thankfully, today we know better. With our increasing understanding of the human body and the composition of the brain, we have come to learn a truth far different from the superstitions of the past. We have learned that there are physiological, chemical, and biological reasons for this behavior, and that these circumstances are far beyond an individual's control. We have also learned that these illnesses are treatable, and that with the right combinations of medicinal and behavioral therapy, these people can be helped, and can frequently lead a life as normal as yours or mine.

But mental illness continues to exact a heavy toll on many, many lives. Even though we know so much more about mental illness, it can still bring devastating consequences to those it touches; their families, their friends, and their loved ones bear this as well. These individuals and families not only deal with the societal prejudices and suspicions hanging on from the past, but they must also contend with a structural, systematic discrimination that most often bars them from getting the care they need and deserve. The advancement in our knowledge of these illnesses has not been accompanied by a change in the policies of most health care insurers. Consider the following facts for a moment:

MENTAL ILLNESS—A WIDESPREAD DISEASE

One person out of every five—more than 40 million adults—in this Nation will be afflicted by some type of mental illness.

Schizophrenia alone is 50 times more common than cystic fibrosis, 60 times more common than muscular dystrophy and will strike between 2 and 3 million Americans.

Among children and adolescents, nearly 7.5 million, or 12 percent, suffer from one or more mental disorders.

DISCRIMINATION IN HEALTH INSURANCE

Only 2 percent of Americans with private health care coverage have policies that adequately and fairly cover severe mental illnesses.

Health care reform plans designed to make health care more accessible and affordable would continue the discrimination prevalent in private health insurance today. Many plans: allow 365 days for inpatient physical care but only 45 days of inpatient psychiatric care; provide unlimited coverage of office visits for physical care but only 20 visits for psychiatric care; and provide up to $1 million in lifetime coverage for physical care but only $50,000 lifetime coverage for mental health care. These are discriminations that we cannot let continue, especially if we reform the health care programs, and more particularly if we reform the insurance programs of our Nation.

Furthermore, we find that only 10 percent of all insurance policies have coverage for partial hospitalization, despite proven success in producing good outcomes while controlling costs with persons with mental illness, and 60 percent of health maintenance organizations and preferred provider organizations completely exclude coverage of some treatments for severe mental illness.

Some will immediately say we cannot afford it or that inclusion of this treatment will cost too much. But let us take a look at the efficacy of treatment for these individuals, especially when compared with the success rates of treatments for other physical ailments. For a long time, many who are in this field—especially on the insurance side—have behaved as if you get far better results for angioplasty than you do for treatments for bipolar illness.

Let me give you some facts as to efficacy of treatment in the United States today. Treatment for bipolar disorders—that is, those disorders characterized by extreme lows and extreme highs—has an 80 percent success rate if you get treatment, both medicine and care. Schizophrenia, the most dread of mental illnesses, has a 60-percent success rate in the United States today if treated properly. Major depression has a 65 percent success rate.

Let me remind everybody that when we speak of schizophrenia or manic depression, frequently we think these are the dredges of society. I would like to remind everyone that some of the greatest men and women in all of history were manic depressives. Let me give you a few: Winston Churchill. Unquestionably, he would be diagnosed today as manic depressive because he had those extreme highs, when he said he never slept and he sat around and wrote history books, and all of a sudden the black hole, 3, 4 months in a state of depression. He was able to cope with it. Most human beings with that kind of illness cannot quite cope with it. They are not dredges or imbeciles, they are not the low intellectual people. In fact, quite to the contrary.

Compare this with commonly reimbursed treatments for cardiovascular diseases. Let us talk about that for a minute.

Angioplasty has a 41-percent success rate. Treatment for schizophrenia, the dread disease, has a 60-percent success rate. We can go on with many of the other ones. There is a 52-percent effective rate for atherectomy, one of the very important kind of treatments that everybody thinks we ought to be doing.

Furthermore, the National Institutes of Mental Health estimates that primary preventive care will add $6.5 billion annually to the overall cost of mental health care. This will be offset by an overall savings of about $8.7 billion to society. That is a $2.2 billion savings. The Federal Government alone spends approximately $14 billion each year for disability payments to these individuals—25 percent of all disability payments. Clearly, helping these individuals early on with medical treatment not only makes the distribution of health care services fair, but also saves the Government and society money over the long term.

So you can see why I feel it is a necessity that we do something to resolve this situation. Frankly, without some

relief, the mentally ill will continue to be denied the treatment they need. The problems associated with nontreatment will continue to escalate and these individuals will continue to operate on the margins of society.

The Equitable Health Care for Severe Mental Illness bill I am introducing, along with Senator WELLSTONE today, seeks a very simple goal: To provide, in whatever health care reform package is eventually enacted, that the Congress and the President coverage for treatment of these individuals that is commensurate with individuals that are treated and cared for with other diseases. Let me repeat that. Equity just means you will treat mental illness under insurance policies and the like just like you are treating a heart condition, a kidney condition, or whatever physical condition that we have learned to cover. And we will use the same kind of terms of medical necessity which governs and bounds the kind of treatment that is forthcoming for those illnesses.

In 1990, Congress passed and President Bush signed the Americans With Disabilities Act, recognizing that there are individuals in society whose physical needs require special protection under the law. We determined that, because of conditions beyond their control, disabled Americans, many of them, their access to services and facilities had to be made available on an unrestricted, nondiscriminatory manner. We recognize that this constituted an infringement on their civil rights when treated otherwise. We did the right thing in trying to be helpful. I believe it is time we should view severe mental illness in this same light and do the right thing here, as well.

We must take steps to protect these citizens from unfair treatment and systematic discrimination. As I circulate this bill, which I now send to the desk, and ask that it be appropriately referred, and as I circulate it to fellow Senators, I hope they will seriously consider it. It is one of the severe and serious discriminations in this society that remains alive. Why do insurance companies not cover it in broader scope? Because one insurance company eliminated it and they were able to reduce their premiums. Then another company decided if they want lower premiums, they must reduce the mental health care coverage, and on and on it went until now the situation is as I have described.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

NATIONAL INSTITUTE OF MENTAL HEALTH REPORT ON MENTAL ILLNESS IN AMERICA—HIGHLIGHTS

Number of people suffering from mental illness: 2.8 percent of the nation's adult population. Approximately 5 million people.

Cost of equitable coverage for severe mental illness:

Will add only $6.5 billion in new health care costs.

Will be offset by $8.7 billion reduction in health care costs and costs to society.

Will yield an aggregate $2.2 billion savings for the nation.

How effective are treatments for severe mental disorders?

Panic Disorder: 80 percent success rate.

Bipolar Disorder: 80 percent success rate.

Major Depression: 65 percent success rate.

Schizophrenia: 60 percent success rate.

Obsessive Compulsive: 60 percent success rate.

How effective are treatments for commonly reimbursed cardiovascular disorders?

Angioplasty: 41 percent success rate.

Atherectomy: 52 percent success rate.

Costs to federal government? People with severe mental disorders account for 25 percent (or approximately $14 billion) of all federal disability payments (Social Security Insurance and Social Security Disability Insurance).

Mr. KENNEDY. Mr. President, I urge all of my colleagues to pay close attention to the interventions of the Senator from New Mexico. I think for all of us who care about health care know he has been tireless on the whole issue of mental health which is affecting families in this country. All of us are in his debt for all of the good work he does in this area. He has been and a tireless proponent of the mentally challenged, and we are grateful for his leadership.

Mr. WELLSTONE. Mr. President, I am pleased to join my colleague, Senator DOMENICI, to introduce legislation on an issue that I feel so strongly about—equitable health care coverage for mental illnesses.

Let me say first that it has been a real honor to work with Senator DOMENICI as cochair of the Senate Working Group on Mental Health and I look forward to building on the tremendous progress we made last year.

For far too long, mental health and substance abuse have been put in parentheses. We didn't want to talk about it and we didn't want to take it seriously. The stigma of mental illness and substance abuse has kept many in need from seeking help, and has prevented policymakers from providing it.

While we failed to enact comprehensive health care reform during the last Congress, we did make great strides in terms of increasing awareness and understanding of the importance of parity, flexibility, and a full range of comprehensive mental health benefits.

As cochair of the Senate Working Group on Mental Health I am proud of the work we did last year. But we must act this year on the issues that we were so successful at bringing to the forefront of the debate and at reaching bipartisan agreement on.

We have a tremendous body of new evidence proving that without a doubt mental health and substance abuse disorders are diagnosable and treatable in a cost-effective manner. In fact, we can now show that within a very short period of time it costs less to treat these disorders directly and appropriately than not to treat them at all. We can say this is true based on studies of every sector of our population: Insured and employed, uninsured and unemployed, people who now use the private system and those who now use the public system.

Mental illness and substance abuse have touched many of our families and friends. And for this reason and many others this is not a partisan issue. Americans do not see a distinction between mental and physical illnesses, and they do not want them treated differently. I am proud to cosponsor this legislation, which would make it the policy of the Federal Government to provide coverage for the treatment of severe mental illnesses that is commensurate with that provided for other major physical illnesses in any form of health care reform that is enacted by Congress and the President.

And, most of all, I look forward to continuing to work with Senator DOMENICI to end discrimination against this very vulnerable population and their families. After all, it's only old data and old ideas that keep us from covering mental health and substance abuse the same way we cover any other real illness, whether acute or chronic.

By Mr. MCCONNELL (for himself and Mr. ABRAHAM):

S. 300. A bill to reform the civil justice system, and for other purposes; to the Committee on the Judiciary.

THE LAWSUIT REFORM ACT OF 1995

Mr. MCCONNELL. Mr. President, our civil justice system is unable to adequately serve the people who need it. Our legal system, over the last 30 years, has become inefficient, costly and unpredictable. People who need a forum to resolve a dispute find less and less satisfaction in our courts; they face interminable delays, contentious proceedings, and decisions that too often seem neither fair nor just. We must bring needed change to the courts before Americans lose confidence in one of the crucial pillars of our democracy.

Today I am introducing the Lawsuit Reform Act of 1995, designed to start the process for reforming our litigation system. The bill is intended to reduce some of the rewards that now exist for bringing a lawsuit and to introduce some incentives to resolve cases without resort to litigation.

Let's face it, Americans are sue happy. The United States has become a litigation prone society, with far reaching consequences: Too many lawsuits and clogged courts hurt the U.S. in the international marketplace. And, the threat of lawsuits impedes innovation and invention.

That our Nation has become a society of people too willing to sue each other is also a symptom of moral decay. Too often, we try to blame someone else for our situation, and with a lawsuit, we try get that someone else to foot the bill. So, we have to get rid of the incentives for suing, and we have to ensure that those who do

suffer losses get compensated fairly for those losses. The courts need to be available for those who have real disputes, and rationality, civility and fairness must be restored to our legal system.

The bill contains a number of provisions, some of which I have introduced in previous Congresses. Other provisions represent bold new directions for our legal system. For example, reform of attorney contingent fee arrangements—that is, limiting contingent fees to that portion of an award for which the attorney undertook risk and added value—will restore the balance to the lawyer-client relationship. It will remove the enormous financial stake trial lawyers now have in their clients cases, and it will significantly reduce the $13 to $15 billion paid in contingency fees. Incidentally, this provision has the endorsement of legal scholars from Judge Robert Bork to Normal Dorsen.

Another provision, early offer and recovery, will put more money in the hands of injured parties more quickly and effectively. In return for refraining from a lawsuit, an injured party would get all of his or her economic losses paid by the responsible parties. This mechanism has the potential to break the link between the litigation system and the overuse and abuse of the health care system. If an injured party gets a commitment to have all of his or her expenses paid, then there is no incentive to inflate expenses by making unnecessary trips to the doctor. And the 57 cents of every dollar spent in the litigation system as transaction costs associated with lawyers will be significantly decreased. Injured plaintiff will get much more than 43 cents of every dollar now spent on litigation.

The bill contains a loser-pays provision, restricted only to those who can afford to assume the risk of having to pay their opponent's legal fees. And, the bill includes needed limitations on punitive damages, reforms to the collateral source rule and an end to joint and several liability.

Mr. President, I am pleased to be joined in this effort by Senator ABRAHAM. Although he is new to the Senate, he has extensive experience on this issue. Our bill contains some bold initiatives for reform. These changes will make a real difference in the legal system.

I am including in the RECORD a summary of the bill, and I will return to the floor on a regular basis to highlight the problems with our legal system and the reforms needed. I look forward to the Senate tackling legal reform in this Congress.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

SUMMARY OF LAWSUIT REFORM ACT OF 1995

THE PROBLEM

Over the last 30 years, the American civil justice system has become inefficient, unpredictable and costly. Those who need the court system to resolve their disputes face interminable delay, much of which can be blamed on frivolous lawsuits clogging the courts or upon unreasonable litigation when a settlement could be achieved.

The threat of lawsuits impedes invention, innovation and the competitive position our nation has enjoyed in the world marketplace. No nation is as litigious as the United States.

It is imperative that we restore rationality, certainty, fairness and civility to our legal system. For too long, a group of trial lawyers have prevented efforts to bring reasonable change to the legal system. Many of those who practice in our nation's courts have a vested interest in maintaining the status quo. But just as decisions about war are too important to leave to the generals, legal reform is simply too important to leave to the lawyers.

The Lawsuit Reform Act of 1995 contains a variety of options for reforming the civil justice system.

ACCOUNTABILITY IN ATTORNEYS' FEES

The legal system can be arcane and foreign to all but those who make it their occupation. Consequently, clients must rely on lawyers not only to handle their legal needs but even to tell them what their legal needs are. As a result, lawyers, like other experts in similar situations, are by the nature of their work well positioned to take advantage of those who come to them for assistance.

Most lawyers do not misuse their position. Unfortunately, however, some do. Moreover, the organized bar, which has been set up to serve as the principal mechanism for regulating such abuses, has frequently—sometimes for good reason—had considerable difficulty in drawing the line between acceptable and unacceptable conduct.

One key area where these problems are apparent is in the standard practice of taking tort cases on a contingent fee basis. Contingent fees play an important role in allowing plaintiffs to bring suit if their cases are legitimate, their chances of recovery uncertain, and their resources limited. But they have no place even where a plaintiff has limited resources if the recovery is a virtual certainty. Many tort cases are of the latter type, and the lawyers who take them know it. Nevertheless, the lawyers still take them on a contingent fee basis and collect very large fees because the plaintiff does not know it.

This section is designed to put some balance in the lawyer-client relationship. First, it requires that attorneys disclose fee arrangements to the potential client and inform the client that the contingent fee is not mandatory but an option.

In addition, it limits the collection of a contingent fee by an attorney to that portion of the award which was achieved by the attorney's work and undertaking of risk. It uses the party's own behavior to determine which portion of the award that should be by setting out limits on the attorney's contingent fee when a settlement is offered: if the attorney is retained to advise the claimant on the settlement offer, the attorney will be precluded from charging a contingent fee; if the attorney's representation results in an increased offer, the attorney may charge an hourly or contingent fee, not to exceed 20% of the increase in the offer; if the attorney obtains the settlement offer, the contingent fee will be limited to 10% of the first $100,000 and 5% of any additional amount. If the case goes to trial, the attorney's contingent fee could only be based upon the amount of the award that exceeds the settlement offer. The effect is to limit the attorney contingent fee to that portion of the case to which the attorney adds value.

Another provision requires judges, under Federal Rule of Civil Procedure 11, to impose sanctions on attorneys who file frivolous pleadings. Rule 11 was weakened in 1992 to give judges the discretion to impose sanctions.

The final provision of this section introduces loser pays in tort cases where the plaintiff seeks damages for physical or mental injury, property damage or other economic loss.

In virtually every western nation except the U.S., the loser pays for the costs of litigation. Within our own legal system, we have dozens of fee shifting laws. But these have become ''one way'' shifting, allowing only prevailing plaintiffs to recover their attorneys' fees from losing defendants.

This provision restores some balance in the system by setting up a two way fee shifting that requires either losing party in a tort case to pay the other's attorney's fees.

The loser pays rule is limited to the amount of fees owed by the loser to its own attorney. And the loser pay rule will not apply to those individuals and small businesses which can least afford to pay. In addition, courts would retain discretion to refuse to award attorneys' fees or reduce the award if it would be in the interests of justice.

EARLY OFFER

A lawsuit can be avoided if the injured party gets fully compensated quickly. Moreover, a defendant may be willing to pay compensation but is prevented from doing so by the need to make an offer that will also pay the plaintiff's lawyer handsomely. This section creates sufficient incentives for a prompt compensatory settlement that should overcome this obstacle.

First, it sets up a mechanism allowing the potential plaintiff to notify the potential defendants of the injury and the compensation necessary. The potential defendant will then be allowed to make an early offer to pay all economic losses, including future economic losses; if it is accepted, the matter is resolved without a lawsuit. If the plaintiff elects to prove the elements of the case beyond a reasonable doubt, including that the defendant was grossly negligent or intentionally caused the injury, the plaintiff will not be foreclosed from bringing a lawsuit.

FAIR SHARE ASSESSMENT OF DAMAGES

Defendants' liability, in the American legal system, is often based upon the ability to pay and not on the degree of responsibility. The doctrine of ''joint and several liability'' permits a plaintiff to recover the entire damage award from any of the defendants sued. If one defendant is judgment-proof, but was 80% responsible, the plaintiff can still get the entire judgment paid by another defendant, even though that defendant was significantly less responsible.

This section reforms the doctrine of joint and several liability and permits recovery from a defendant only for damages attributable to the person's share of responsibility. It applies to tort cases where the plaintiff seeks damages for physical or mental injury, property damage or economic loss.

ELIMINATE DOUBLE RECOVERIES

A plaintiff can recover damages without regard to money the plaintiff may be receiving from other sources, such as disability insurance or a wage continuation program.

This section would put an end to these double recoveries by prohibiting the inclusion of these collateral sources from the proof of damages. And it prohibits subrogation

claims by the entities providing these collateral source payments. This provision applies to tort cases where the plaintiff seeks damages for physical or mental injury, property damage or economic loss.

PUNITIVE DAMAGES AS PUNISHMENT, NOT WINDFALL

Those accused of a crime have constitutional protection; they are informed of the charges against them and know the punishment they face.

In many cases, civil defendants face punitive damage awards that bear no relationship to the concept of punishment and deterrence and are designed to further compensate the plaintiff and his or her attorney. A reasonable limit on punitive damages will serve the public policy objective of punishment and deterrence. The bill limits punitive damages in tort cases where the plaintiff seeks damages for physical or mental injury, property damage or economic loss, to the greater of $250,000 or three times compensatory damages.

ALTERNATIVE DISPUTE RESOLUTION

Encouragement of ADR should be a focus of any civil justice reform effort. However, ADR should not become another procedural hurdle for litigants.

This section creates voluntary binding ADR. It requires, in all federal question and diversity cases, parties be told by their attorneys of ADR options. If parties agree to ADR, then they are bound by its results.

ENSURING EXPERT WITNESSES HAVE EXPERTISE

Too often, parties in a lawsuit bring in a witness asserted to be an ''expert'' to offer an opinion which supports a particular theory of the case. The 1975 Federal Rules of Evidence—in allowing any expert testimony that might be ''helpful'' to the jury—depart from the traditional standard: that expert testimony should only be admitted if its basis has ''gained general acceptance in the particular field.'' The result has been a slippery slope to junk science finding its way into courtrooms across the nation.

This section is designed to ensure the expert witness actually has some expertise in a recognized field, and it will require the disqualification of any expert witness whose compensation is linked to the outcome of the case.

PRIVATE RIGHTS OF ACTION

Too many judges have a tendency to imply a private right of action in a law where Congress does not explicitly create it. The result is excessive litigation and a power grab by the courts never intended by Congress.

This section creates a rule of construction that federal laws which do not expressly contain a private right of action should not be interpreted to imply one.

''OPT OUT'' BY THE STATES

States will retain the right to opt out of any one or more of the provisions of this Act by affirmatively enacting legislation to opt out.

● Mr. ABRAHAM. Mr. President, it is my great pleasure to cosponsor the Lawsuit Reform Act of 1995.

Last fall's election was about change. And if ever there was an area in need of change, it is the current state of our legal system.

The current system doesn't work. It is arbitrary and imposes excessive costs and long delays. It must be reoriented to bring about the proper objectives of any legal system: swift justice and fair results.

Moreover, our litigation explosion is hurting U.S. competitiveness and stifling innovation with the high costs of lawsuits and damage awards in our courts. The costs are estimated to reach $300 billion annually—about 4.5 percent of the Nation's $6.7 trillion gross domestic product. These costs are passed on to consumers, making legal system their enemy rather than their ally.

It is time for an overhaul of the system. The McConnell-Abraham Lawsuit Reform Act of 1995 signals the beginning of my efforts to help bring about that overhaul.

The McConnell-Abraham Lawsuit Reform Act is principally aimed at one aspect of the litigation problem. Our current system contains insufficient incentives to reward settlements, and insufficient penalties for litigating to the hilt disputes that should be able to be worked out.

One cause of this is that as litigation has been exploding, more and more lawyers have sought to maximize their fees at the expense of their clients' best interests. And while the legal profession has made attempts at self-regulation, it has been largely unsuccessful in stopping this trend.

The McConnell-Abraham Lawsuit Reform Act of 1995 takes an extremely innovative approach to this problem. It empowers clients in personal injury cases by creating incentives for potential plaintiffs and defendants to get together and settle meritorious cases. It also reduces lawyers' incentives to discourage settlements by barring them from charging contingent fees in cases where recovery is all but certain. And it creates penalties for frivolous litigation, ranging from mandatory sanctions for frivolous filings to a ''loser pays'' rule in certain classes of cases.

In short, the McConnell-Abraham Lawsuit Reform Act of 1995 will bring our legal system closer to accomplishing its central purposes: swift and certain redress for the meritorious claimant and penalties for abusive litigation. Therefore I am proud to join the distinguished Senator from Kentucky as an original cosponsor of this excellent piece of legislation.●

By Mr. KYL:

S. 301. A bill to provide for the negotiation of bilateral prisoner transfer treaties with foreign countries and to provide for the training in the United States of border patrol and customs service personnel from foreign countries; to the Committee on Foreign Relations.

THE CRIMINAL ALIEN TRANSFER AND BORDER ENFORCEMENT ACT OF 1995

Mr. KYL. Mr. President, today, I am introducing the Criminal Alien Transfer and Border Enforcement Act of 1995, legislation to make it easier to return criminal aliens back to their country of citizenship to serve out the remainder of their sentences. I was an original cosponsor of similar legislation introduced in the House last year by Representative STEVE HORN of California. Representative HORN reintroduced this legislation in the 104th Congress on January 18. His hard work in this area is very much appreciated.

The Criminal Alien Transfer and Border Enforcement Act advises the President to renegotiate bilateral prison transfer treaties with countries which have large numbers of alien criminals in U.S. prisons. The elimination of any requirement of prisoner consent would be a primary focus of the renegotiation. As an incentive to renegotiate their treaties, this bill would allow foreign governments that renegotiate and comply with a new treaty to send their law enforcement personnel to the Border Patrol and Customs Service academies where an integrated approach to drug interdiction and border management would be developed.

The tremendous financial burden that the Federal Government and States incur to imprison criminal aliens continues to grow. The Bureau of Prisons, for example, estimates that the incarceration of criminal aliens in U.S. and State prisons costs U.S. taxpayers approximately $1.2 billion a year. Criminal aliens make up about 24 percent of the total 91,000 Federal prison population. At a cost of $20,803 per Federal prisoner, taxpayers from Maine to California to Arizona are footing the bill to incarcerate these criminals. A national approach to returning these criminal aliens home and eliminating these costs must be developed.

On a State level, Arizona knows all too well about these costs. According to the Arizona Department of Corrections, the number of criminal aliens in Arizona State prisons has increased from 596 in 1984 to 2,066 as of December 31, 1994, a 250-percent increase. Criminal aliens comprise 10.4 percent of Arizona's inmate population; that compares to a State criminal alien inmate population of 4 percent nationally. Those 2,066 criminals cost Arizona taxpayers $16,020 each, or nearly $40 million in total last year.

The logical way to reduce these costs would be to work out an agreement where a country would except the responsibility for taking its own citizens back and ensuring that the prison term is completed before the individual is released back into his or her own country. But, current bilateral prison transfer treaties allow criminal aliens to choose whether they will serve time in the United States or their country of citizenship. As a result, the criminal can circumvent any agreement worked out between two countries or a State and foreign government. This must change.

Our Nation's citizens are shocked when they hear that this is how our Nation's prison transfer treaties work. For example, in June of 1994 I had a constituent from Phoenix write me with some good suggestions about immigration reform. In the letter he said, ''Can you enlighten me as to whether or not we have a law on the books

which definitely requires the deportation of aliens who commit and are convicted of felonies? * * * [Someone] told me that once the alien is convicted of a felony, he is immediately deported to the country of origin with no appeals process and no bail.''

My answer to him was that this is how it should work but, because of the way our bilateral prison transfer treaties are written, I reemphasize, criminal aliens choose whether or not they are deported to their own country to serve out their sentences.

Arizona has been particularly negatively impacted by this aspect of prison transfer treaties, specifically the United States-Mexico Prison Transfer Treaty. Gov. Fife Symington and Department of Corrections Director Sam Lewis have been working with Mexican authorities and the State Department to return some Mexican inmates to serve their sentences in Mexico. But, without the elimination of the prisoner consent provision of the outdated United States-Mexico Prison Transfer Treaty, the likelihood of their return is minimal. ''Of those who we have determined to be eligible under the present [voluntary repatriation] criteria, 5 percent or less have demonstrated any willingness to return [to Mexico],'' said DOC Director Lewis in a recent conversation.

Something is clearly wrong when States such as Arizona, which have ideas about how to reduce the burden of incarcerating illegal aliens, are kept from doing so because the criminal does not like the idea of serving time in the prison system of his or her country.

Mr. President, this problem is not going away. The INS estimates that as of October 1992, approximately 3.4 million illegal aliens were in this country and, according to INS, that number is growing by about 300,000 yearly. In the Tucson border sector of Arizona alone, illegal immigrant apprehensions for the month of January are up 80 percent over the same period last year.

I ask unanimous consent that a table be printed in the RECORD.

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

Arizona Department of Corrections—Estimates of Alien Inmate Population and Annual Per Capita Costs

Date	Aliens—estimated number	Annual per capita cost
12/31/94	2,066	16,020
6/30/94	1,968	16,020
6/30/93	1,791	15,773
6/30/92	1,602	15,979
6/30/91	1,422	16,457
6/30/90	1,289	16,143
6/30/89	1,153	16,174
6/30/88	1,040	15,717
6/30/87	957	16,321
6/30/86	774	15,497
6/30/85	684	13,882
6/30/84	596	NA

Mr. KYL. Mr. President, nearly 600 illegal immigrants are arrested every day in Nogales, AZ. These statistics will most likely set an all-time illegal immigrant apprehension arrest record for Arizona.

Ensuring that adequate resources are allocated to stop these aliens at the border is the most important step we can take toward halting illegal immigration in this country. Renegotiating prison transfer treaties is another important step and one that will free up Federal and State dollars to go toward effective border control.

We are a land of legal immigrants and we should be proud to be and say so. But, no American, foreign-born or U.S.-born, believes we should be a land of criminal and illegal immigrants. The Criminal Alien Transfer and Border Enforcement Act will provide a necessary step to ensuring that we do not become a nation of illegal and criminal aliens. Mr. President, I encourage my colleagues to join me in urging the President to renegotiate our Nation's bilateral prison transfer treaties and to cosponsor this bill.

I ask unanimous consent that this bill be printed in the RECORD.

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

S. 301

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 ''Criminal Alien Transfer and Border Enforcement Act of 1995''.

SEC. 2. PURPOSE.

The purpose of this Act is to relieve overcrowding in Federal and State prisons and costs borne by American taxpayers by providing for the transfer of aliens unlawfully in the United States who have been convicted of committing crimes in the United States to their native countries to be incarcerated for the duration of their sentences.

SEC. 3. FINDINGS.

The Congress makes the following findings:

(1) The cost of incarcerating an alien unlawfully in the United States in a Federal or State prison averages $20,803 per year.

(2) There are approximately 58,000 aliens convicted of crimes incarcerated in United States prisons, including 41,000 aliens in State prisons and 17,000 aliens in Federal prisons.

(3) Many of these aliens convicted of crimes are also unlawfully in the United States, but the Immigration and Naturalization Service does not have exact data on how many.

(4) The combined cost to Federal and State governments for the incarceration of such criminal aliens is approximately $1,200,000,000, including—

(A) for State governments, $760,000,000; and

(B) for the Federal Government, $440,000,000.

SEC. 4. PRISONER TRANSFER TREATIES.

Not later than 90 days after the date of enactment of this Act, the President should begin to negotiate and renegotiate bilateral prisoner transfer treaties. The focus of such negotiations shall be to expedite the transfer of aliens unlawfully in the United States who are incarcerated in United States prisons, to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts, and to eliminate any requirement of prisoner consent to such a transfer.

SEC. 5. CERTIFICATION.

The President shall certify whether each prisoner transfer treaty is effective in returning aliens unlawfully in the United States who are incarcerated in the United States to their country of citizenship.

SEC. 6. TRAINING OF BORDER PATROL AND CUSTOMS PERSONNEL FROM FOREIGN COUNTRIES.

Subject to a certification under section 5, the President shall direct the Border Patrol Academy and the Customs Service Academy to enroll for training certain foreign law enforcement personnel. The President shall make appointments of foreign law enforcement personnel to such academies to enhance the following United States law enforcement goals:

(1) Drug interdiction and other cross-border criminal activity.

(2) Preventing illegal immigration.

(3) Preventing the illegal entry of goods into the United States (including goods the sale of which is illegal in the United States, the entry of which would cause a quota to be exceeded, or goods which have not paid the appropriate duty or tariff).

By Mrs. HUTCHISON;

S. 302. A bill to make a technical correction to section 11501(h)(2) of title 49, United State Code; to the Committee on Commerce, Science, and Transportation.

NONCONSENT TOW LEGISLATION

• Mrs. HUTCHISON. Mr. President, last year, the 103d Congress preempted State regulation of intrastate trucking, which was a proper policy that had my full support. However, in its breadth, deregulation swept local government regulation of tow trucks into its net, leaving local governments uncertain about their rules governing the area of nonconsent tows.

Nonconsent tows occur at the scene of an accident where the owner is unable to give consent to towing, and when a car is towed from private property without the knowledge or consent of the owner. Local regulation of emergency nonconsent tows is aimed ostensibly at protecting the motoring public at the scene of an accident to prevent a swarm of tow truck operators. Local regulation of private property nonconsent tows are consumer protection rules which generally go to how much a nonconsent tow from private property will cost and where the car can be taken.

After the passage of trucking deregulation, Senator GORTON and I introduced legislation to roll back the preemption of deregulation over tow trucks and transporters of recyclable materials. The bill passed in the Senate but was changed in the House; the legislative clock ran out before identical versions could be passed in both houses.

Trucking deregulation went into effect on January 1 and local governments have moved to comply with deregulation of towing price, route and service; however, there is still a great deal of confusion throughout local jurisdictions around the country regarding the degree to which cities can regulate nonconsent tows. Some city councils, such as the city of Houston's, have chosen to impose a 120-day moratorium on changing their regulations until

Congress has had a chance to act in this area and clarify local authority.

The legislation I introduce today provides that clarification. It states that tows made at the request of a law enforcement officer or without the prior consent of the owner are not subject to the terms of the intrastate trucking deregulation, retroactive to January 1, when deregulation took effect. This will permit cities to continue rate regulation for nonconsent tows, which protects consumers that have little or no negotiating power in nonconsent tow situations. It will also permit them to utilize a system of selection for emergency nonconsent tows, if they so choose.●

By Mr. LIEBERMAN (for himself, Mr. MCCAIN, Mr. BRADLEY, Mr. BROWN, Mr. COATS, Mr. KYL, and Mr. MCCONNELL):

S. 303. A bill to establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE BIOMATERIALS ACCESS ASSURANCE ACT OF 1995

● Mr. LIEBERMAN. Mr. President, I am introducing today, together with Senator MCCAIN and others the Biomaterials Access Assurance Act of 1995. This bill directly addresses a major threat to many of the miracles of modern medicine. By taking this small step now, millions of Americans will no longer have to worry about the supply of life-saving medical devices.

Over the next few years, public health may be seriously jeopardized if makers of the life-saving medical devices that we take for granted today are no longer able to buy the raw materials and components necessary to produce their products. The reason is an all too common one nowadays—an out-of-control product liability system.

How could this happen? Last year, as chairman of the Subcommittee on Regulation and Government Information, I held a hearing to examine this problem. Witness after witness pointed out that the current legal system makes it too easy to bring lawsuits against raw materials suppliers and too expensive for those suppliers to defend themselves—even when they were not at fault and end up winning. Because of this, many suppliers have decided that the costs of defending these lawsuits are just too high to justify selling raw materials to the makers of implantable medical devices. In short, for those suppliers, it just isn't worth it.

How could this happen? A recent study by Aronoff Associates paints a clear, but dismal, picture. That study surveyed the markets for polyester yarn, resins such as DuPont's Teflon, and polyacetal resin such as DuPont's Delrin. The study showed that sales of these raw materials for use in manufacturing implantable medical devices was just a tiny percentage—0.006 percent—of the overall market—$606,000 out of total sales of over $11 billion.

In return for that extra $606,000 in total annual sales, however, that raw material supplier, like others, faced potentially huge liability related costs, even if they never lose a lawsuit. To take one example, a company named Vitek manufactured an estimated 26,000 jaw implants using about 5 cents worth of DuPont Teflon in each device. The device was developed, designed and marketed by Vitek, which was not related to DuPont. When those implants failed, Vitek declared bankruptcy, its founder fled to Switzerland and the patients sued DuPont. DuPont has won virtually all these cases—one of the last cases was dismissed earlier this month—but the cost has been staggering. The study estimated that DuPont alone has spent at least $8 million per year over 6 years to defend these suits.

To put this into perspective, DuPont's estimated legal expenses in these cases for just 1 year would buy over a 13-year supply of DuPont's Dacron polyester, Teflon and Delrin for all U.S. makers of implantable medical devices, not just makers of jaw implants.

Faced with this overwhelming liability, DuPont decided 2 years ago to stop selling its products to manufacturers of permanently implanted medical devices. DuPont has subsequently allowed manufacturers to purchase up to 3 more years worth of raw materials.

One supplier's decision alone might not be troublesome except that there is no reason to believe that the economics will be different for other suppliers around the world. One of the witnesses at the hearing testified that she has already contacted 15 alternate suppliers of polyester yearn worldwide. All were interested in selling her raw materials—except for use in products made and used in the United States. By itself, this is a powerful statement about the nature of our American product liability laws, and makes a powerful case for reform.

There's more at stake however, here than just protecting suppliers from liability. It's more than just making those raw materials available to the manufacturers of medical devices. What's at stake is the health of millions of Americans who depend on medical devices for their every day survival.

What's at stake is the health of children like Thomas Reilly from Houston, TX, who suffers from hydrocephalus, a condition in which fluid accumulates around the brain. A special shunt enables him to survive. But continued production of that shunt is in doubt because the raw materials' suppliers are concerned about the potential lawsuit costs. At our hearing last year, Thomas' father, Mark Reilly, pleaded for Congress to move forward quickly to assure that the supply of those shunts will continue.

What's at stake is the health of adults like Peggy Phillips of Falls Church, VA, whose heart had twice stopped beating because of fibrillation. Today, she lives an active, normal life because she has an implanted automatic defibrillator. Again, critical components of the defilbrillator may no longer be available because of potential product liability costs. Ms. Phillips urges Congress to move swiftly to enact legislation protecting raw materials and component part suppliers from product liability.

The scope of this problem affects young and old alike. Take a pacemaker. Pacemakers are installed in patients whose hearts no longer generate enough of an electrical pulse to get the heart to beat. To keep the heart beating, a pacemaker is connected to the heart with wires. These wires have silicone rubber insulation. Unfortunately, the suppliers of the rubber have begun to withdraw from the market. With this pacemaker, thousands of Americans can live productive and healthy lives for decades.

Take another example, a heart valve. Around the edge of a heart valve is a sleeve of polyester fabric. This fabric is what the surgeon sews through when he or she installs this valve. Without that sleeve, it would be difficult, if not impossible, to install the valve. Without that valve, patients die prematurely.

In short, this developing product liability crisis will have widespread and serious effects. We cannot simply allow the over 7 million people who own their health to medical devices to become casualties of an outmoded legal liability system. Because product liability litigation costs make the economics of supplying raw materials to the implantable medical device makers very unfavorable, it is imperative that we act now. We cannot rationally expect raw materials suppliers to continue to serve the medical device market out of the goodness of their hearts, notwithstanding the liability related costs. We need to reform our product liability laws, to give raw material suppliers some assurance that unless there is real evidence that they were responsible for putting a defective device on the market, they cannot be sued simply in the hope that there deep pockets will fund legal settlements.

I have long believed that liability reform could be both proconsumer and probusiness. I believe the testimony we heard on this subject last year proved this once again. When fear of liability suits and litigation costs drives valuable, lifesaving products off the market because their makers cannot get raw materials, consumers are the ones to suffer.

When companies divert money from developing new lifesaving products to replace old sources of raw materials supply, consumers are again the ones to suffer. When one company must spend millions just to defend itself in lawsuits over a product it did not even design or make—for which it simply provided a raw material worth 5

cents—it is the consumer that suffers the most. Our hearing dramatically illustrated that efforts to increase compensation for the injured can sometimes come at an unacceptably high cost.

Based on the testimony we heard, I, along with my distinguished colleague from Arizona, are committed to forging a solution to remedy this immediate threat to our national public health. Today, we are introducing the Biomaterials Access Assurance Act of 1995, which will establish clear national rules to govern suits against suppliers of raw materials and component parts for permanently implantable medical devices. Under this bill, a supplier of raw materials or component parts can only be sued if the materials they supplied do not meet contractual specifications, or can properly be classified as a manufacturer or seller of the whole product. They cannot, however, be sued for deficiencies in the design of the final device, the testing of that device, or for inadequate warnings with respect to that device.

I believe that enactment of this bill would help ensure that America's patients continue to have access to the best lifesaving medical devices in the world. We must act now, however. This piece of legislation is preventative medicine at its best and is just the cure the patients need.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 303

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 ''Biomaterials Access Assurance Act of 1995''.

SEC. 2. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section

201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) QUALIFIED SPECIALIST.—With respect to an action, the term ''qualified specialist'' means a person who is qualified by knowledge, skill, experience, training, or education in the specialty area that is the subject of the action.

(9) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(10) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(11) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 4. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this Act, a biomaterials supplier may raise any defense set forth in section 5.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this Act is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 6.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this Act applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this Act; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this Act establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this Act and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 5. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if the biomaterials supplier—

(1) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(A) the manufacture of the implant; and

(B) the entrance of the implant in the stream of commerce; and

(2) subsequently resold the implant.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 6. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this Act, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 5(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 5(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 5(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—The procedural requirements described in paragraphs (2) and (3) shall apply to any action by a claimant against a biomaterials supplier that is subject to this Act.

(2) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(A) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(B) an action against the manufacturer is barred by applicable law.

(3) AFFIDAVIT.—At the time the claimant brings an action against a biomaterials supplier the claimant shall be required to submit an affidavit that—

(A) declares that the claimant has consulted and reviewed the facts of the action with a qualified specialist, whose qualifications the claimant shall disclose;

(B) includes a written determination by a qualified specialist that the raw materials or component parts actually used in the manufacture of the implant of the claimant were raw materials or component parts described in section 5(d)(1), together with a statement of the basis for such a determination;

(C) includes a written determination by a qualified specialist that, after a review of the medical record and other relevant material, the raw material or component part supplied by the biomaterials supplier and actually used in the manufacture of the implant was a cause of the harm alleged by claimant, together with a statement of the basis for the determination; and

(D) states that, on the basis of review and consultation of the qualified specialist, the claimant (or the attorney of the claimant) has concluded that there is a reasonable and meritorious cause for the filing of the action against the biomaterials supplier.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 5(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 5(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (3) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 5 on the grounds that the defendant is not a manufacturer subject to such subsection 5(b) or seller subject to subsection 5(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 5(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 5(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 5(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 5(d) or the failure to establish the applicable elements of section 5(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 5(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this Act shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 7. APPLICABILITY.

This Act shall apply to all civil actions covered under this Act that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.●

By Mr. WARNER (for himself and Mr. ROBB):

S. 305. A bill to establish the Shenandoah Valley National Battlefields and Commission in the Commonwealth of Virginia, and for other purposes; to the Committee on Energy and Natural Resources.

THE SHENANDOAH VALLEY NATIONAL BATTLEFIELDS PARTNERSHIP ACT OF 1995

● Mr. WARNER. Mr. President, I am pleased to introduce legislation, along with Senator ROBB, to establish a new national park in the Shenandoah Valley of Virginia.

This legislation mirrors my legislation from last year, S. 1033, which passed the Senate by unanimous consent.

While our purpose is conventional—the preservation of treasured historic resources, our approach is innovative—a cooperative relationship between the National Park Service and private landowners that combines a mix of Federal ownership through donation of lands and protection of private property rights.

This new park will preserve and commemorate the strategic significance of the Civil War battles in the valley which occurred from 1862 to 1864. The park will consist of 1,864 acres at 10 battlefields in the valley at McDowell, Cross Keys, Port Republic, Second Winchester, New Market, Fishers Hill, Toms Brook, Cedar Creek, Kernstown, and Opequon.

The Shenandoah Valley National Battlefields Partnership Act is the product of an indepth study by the National Park Service which was authorized by the Congress in 1990. The Park Service conducted field surveys of 15 battlefields in the valley and concluded in their analysis that ''because of their size and unprotected status, the battlefields of the Shenandoah Valley were its most important, most neglected, and most threatened resource.''

Mr. President, throughout my service in this body, I have been actively involved in the preservation of several Civil War battlefields in Virginia. One of my first legislative initiatives was

to sponsor legislation in 1980 to expand the boundaries of the Manassas National Battlefield Park by 1,522 acres. While some battlefield preservation efforts in Virginia have been accomplished by a consensus of support from local governments, the preservation community and the Federal Government, other efforts have involved a great deal of acrimony.

I am pleased that the Senate will again give approval to my legislation which represents a significant investment of time and commitment by preservation groups, local governments, and many dedicated residents in the valley.

Each party interested in fostering the protection of the Shenandoah Valley battlefields has worked diligently since the Park Service study began in 1990 to craft a consensus proposal that recognizes the limits on the Federal Government's resources to acquire substantial acreage in the valley and balances the needs of property owners and local governments to provide for their economic future.

Mr. President, during the past 2 years that we have worked on gaining national recognition for the Shenandoah Valley battlefields, I have remained committed to this effort because of the steadfast support and leadership by the many local citizens, property owners, preservationists, and local officials in the valley. They have given generously of their personal time to organize local meetings, testify before Congress, and work with the Park Service to advance our proposal.

I am especially grateful to Will Greene, formerly with the Association for the Preservation of Civil War Sites; Jay Monahan and Garland Hudgings, with the Stonewall Brigade Foundation; and many civic leaders such as June Wilmot, with the Winchester-Frederick County Economic Development Commission; Betsy Helm, with Historic Winchester Foundation; Robert Watkins, with the Frederick County Planning Commission, and Barbara Moore, with the Society of Port Republic Preservationists.

Mr. President, these are but a few of the many persons who have assumed the tremendous responsibility over the years to ensure that these historic lands remain undisturbed for future generations. It is no exaggeration to say that this legislation would not be possible today without their firm resolve and passion to preserve these battlefields.

With the passage of this legislation, they will no longer be shouldering this effort alone, but will now have the Park Service as an important partner.

While authorizing limited acquisition of 10 battlefields in the valley, most of this land will be donated to the Park Service. The central feature of this provision is to foster and encourage an atmosphere of cooperation between the Federal Government, State and local governments, property owners, and preservation groups.

We have been fortunate that the valley's predominantly agricultural land uses have provided protection for these battlefields. Permanent preservation, however, is in serious jeopardy as the rural landscape of the valley declines. With the continued pace of growth in the northern valley and the loss of agricultural lands, now is the time for the Federal Government to become a full partner in the local and private efforts to ensure that these lands remain protected for all Americans to study and enjoy.

This bill embodies many of the preservation approaches examined in the ''Study of Civil War Sites in the Shenandoah Valley of Virginia.'' I concur with the study's finding that ''* * * no single alternative is best suited to these sites. A balance must be achieved between preservation, the Valley lifestyle, and economic development * * *''.

In keeping with these recommendations, I believe this bill provides the right balance for preserving these battlefields. With limited Federal ownership, and a commission comprised of local representatives and historians to recommend further additions for Federal stewardship as well as cooperative arrangements with local governments and private landowners, we are achieving the desired goal. It recognizes the rights and responsibilities of local governments to utilize their planning authorities to protect these areas. It gives the Federal Government needed authorities to provide technical assistance on options to protect these battlefields, to provide for visitor interpretation and understanding, and most importantly, to accept lands by donation or purchase only from willing sellers.

As the study proposes a mix of public funding and technical assistance and acquisition of battlefield areas, our legislation embodies these recommendations to foster a partnership between the Federal Government, local governments, landowners and private organizations.

Each will share the responsibility and will prosper from the benefits that a national park designation brings to neighboring communities.

Now is the time for the Federal Government to come forward and participate in the protection of these threatened resources.

Mr. President, there is no question about the historic value of these properties. They have a high degree of integrity and continue to tell an important story of the military strategy employed during the battles of Thomas J. ''Stonewall'' Jackson's valley campaign of 1862 and the battles comprising Union General Philip Sheridan's burning of the Shenandoah Valley in 1864.

Approximately one-third of the recorded events of the Civil War occurred in Virginia. Dyer's ''Compendium of the War of the Rebellion'' records 297 incidents of armed conflict in the Shenandoah Valley during the Civil War: 6 battles, 18 engagements, 21 actions, and 252 skirmishes. The Shenandoah Valley was the richest agricultural region in Virginia, providing provisions to the Confederate forces. In addition, the Confederates used the Valley as a natural corridor for invading or threatening invasion of the North, while the Union forces realized the importance of denying the valley's use to the Confederacy.

Mr. President, surely, these events deserve a permanent place in history, just as Manassas, Gettysburg, and Antietam.

One of the most brilliant and most studied military campaigns in history is Stonewall Jackson's valley campaign of 1862. During that campaign, Jackson's army of 17,000 men defeated three northern armies with a combined strength of 33,000 men in a single month, winning five battles: McDowell, Front Royal, Winchester, Cross Keys, and Port Republic. Most importantly, Jackson's valley campaign created a strategic diversion to draw strength from the Federal's advance on Richmond. It was General Lee who unleashed Jackson in the valley because he understood the importance of creating a diversion to keep Union troops from moving toward Richmond.

Mr. President, I would like to share with my colleagues a brief excerpt from the study which so eloquently describes the passion that continues in the valley today:

> Few regions in the United States have experienced the horrors of systematic destruction, and the memories are still close to the surface for many longtime Valley residents. Family histories are filled with stories that relate to the hardship of that time. It took a generation to repair the savages of ''The Burning'' and another generation before life in the Valley returned to its pre-war condition. There can be found there today a fierce pride in ancestors who survived the war and who struggled to rebuild all that was lost.
>
> The history of the Civil War in the Shenandoah Valley bears witness to the devastation and waste of warfare, but more importantly, it underscores the irrepressible human will to survive, to rebuild, to carry on. The historic events and the human players of the Valley—heroic and tragic alike—have contributed significantly to the texture of our American cultural heritage.

Mr. President, I am confident that these battlefields will make a very positive contribution to the Park Service preservation of this tragic chapter in our American history. These lands are important to our understanding of the events that occurred from 1862 to 1864 when the momentum and tide of the Confederacy's struggle turned and the Union forces began to take hold. ●

By Mr. DORGAN:

S. 306. A bill entitled the ''Television Violence Reduction Through Parental Empowerment Act of 1995''; to the Committee on Commerce, Science, and Transportation.

TELEVISION LEGISLATION

● Mr. DORGAN. Mr. President, today I am introducing legislation that would empower parents to deal with violence

on television. Specifically, the Television Violence Reductions Through Parental Empowerment Act would require that television sets include a technical devise parents could use to block out television programs that are, in their judgment, too violent for their children.

This legislation is identical to legislation Representative ED MARKEY introduced in the House the previous Congress. I introduced this legislation in the Senate last year as well. I am introducing this bill again because I believe that we ought to consider this approach, commonly known as the V-chip bill, in the current debate over how we should address the problem of violence on television. In my judgment, the V-chip idea is an important part of a legislative response to the problem of violence on television.

I understand that the Electronics Industry Association is moving forward on developing an industry standard that will incorporate the ability to block programs based on a rating for violence into new television sets. I endorse and applaud these efforts. This private sector initiative is a very positive development. However, it remains to be seen as to whether or not such efforts will accomplish the goal of empowering parents to control television programs coming into their homes. I intend to work with the industry in this effort and I want to encourage the future of their efforts. Nevertheless, until such a standard is in place and out common goals are accomplished, I still believe that it is necessary to keep this legislation on the table.

There was a great deal of debate in the 103d Congress about television violence. Unfortunately, that debate took place, to a large extent, in congressional committees and no legislation was advanced. I think the broadcast and cable industries, along with the EIA, have all made significant efforts to address public and congressional concern with TV violence. However, I still believe that some modest legislative approach need to be considered.

I encourage my colleagues to support this legislation and in general work with me to advance a solution to television violence that enables the public and parents in particular to send a direct message to the industry. Parents and the public, and not the Government nor the industry, should have the ultimate say in what should and should not be on television The V-chip bill is a means to give consumers another tool.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 306

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Television Violence Reduction Through Parental Empowerment Act of 1995''.

SEC. 2 FINDINGS.

The Congress finds the following:

(1) To the fullest extent possible, parents should be empowered with the technology to choose to block the display on their televisions of programs they consider too violent for their children.

(2) Violence now touches the lives of American children more than adults. From 1982 through 1984, teenagers were the victims of 1,800,000 violent crimes, twice the annual rate of the adult population over age 20. According to the American Academy of Pediatrics, one of every 8 deaths among children age 10–14 years old in 1990 was caused by a shooting. Among teenagers and young adults, that figure rose to one of every four deaths.

(3) Children watch an extensive amount of television. It is estimated that a child watches approximately 22,000 hours of television before finishing high school, almost twice the amount of time spent in the classroom.

(4) The amount of violence on television has reached epidemic levels. The American Psychological Association estimates that the average child witnesses 8,000 murders and 100,000 acts of violence before finishing elementary school.

(5) Three Surgeon Generals, the National Institute of Mental health, the Centers for Disease Control, the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association have concurred for nearly 20 years as to the deleterious effects of television violence on children.

(6) Despite periodic television industry efforts to reduce the amount of television violence, reductions in the level of televised violence have never been long lasting.

(7) Parents who are working are unable to constantly monitor the television viewing habits of their children. Advanced television technologies such as channel compression and digitization will allow the expansion of channel capacity to levels even more unmanageable for parents who want to protect their children from televised violence.

(8) The major broadcast networks and a large number of cable channels have agreed to place parental advisories on programs they consider to be too violent for children. These parental advisories are of limited use to parents if they are not watching television with their children.

(9) The technology currently exists to equip television sets at a nominal cost to permit parents to block the display of television programs they consider too violent for children. However, this technology will only be effective (A) if all television programmers send any adopted rating or warning system electronically with the program signal, and (B) parents are able to block the display not only of individual programs but to block out automatically and simultaneously all programs with such rating.

(10) Congress calls upon the broadcast networks, independent television stations, cable programmers, and satellite programmers to protect the parental right to guide the television viewing habits of children by sending any adopted rating or warning system electronically with the program signal.

SEC. 3. EQUIP TELEVISIONS TO BLOCK PROGRAMS.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following:

''(v) Require that (1) apparatus designed to receive television signals be equipped with circuitry designed to enable viewers to block the display of channels, programs, and time slots; and (2) such apparatus enable viewers to block display of all programs with a common rating. The requirements of this subsection shall apply when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size, measured diagonally.''.

SEC. 4. SHIPPING OR IMPORTING.

(A) REGULATIONS.—Section 330 of the Communications Act of 1934 (47 U.S.C. 330) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by adding after subsection (b) the following new section:

''(c) No person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States any apparatus described in section 303(v) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section. Such rules shall provide performance standards for such blocking technology. Such rules shall further require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by the Commission. As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. This subsection shall not apply to carriers transporting such apparatus without trading it.''.

(b) CONFORMING AMENDMENT.—Section 330(d) of such Act, as redesignated by this Act, is amended by striking ''section 303(s), and section 303(u)'' and inserting in lieu thereof ''and section 303(s), 303(u), and 303(v)''.

SEC. 5. EFFECTIVE DATE.

The amendments made by sections 3 and 4 of this Act shall take effect one year after enactment of this Act.

SEC. 6. RULES.

The Federal Communications Commission, shall promulgate rules to implement the amendments made by this Act within 180 days after the date of its enactment.●

By Mr. LEAHY:

S. 307. A bill to require the Secretary of the Treasury to design and issue new counterfeit-resistant $100 currency; to the Committee on Banking, Housing, and Urban Affairs.

THE COUNTERFEITING AND MONEY LAUNDERING DETERRENCE ACT OF 1995

Mr. LEAHY. Mr. President, I rise today to introduce the Counterfeiting and Money Laundering Deterrence Act of 1995.

Counterfeit money is the cheap way for terrorists to fund their activities around the world. The opening of the trial in New York of the accused terrorists, who allegedly threatened to blow up the United Nations, FBI Headquarters, and other sites, serves as a reminder that our Nation is not immune to such activities. This bill outlines steps we should take to combat both the counterfeiting of our currency and the laundering of the estimated $300 billion per year of ill-gotten profits from drugs, arms smuggling, and other crimes.

This legislation, which Senator KERRY and I also introduced in the last Congress, would accomplish two objectives: First, it would bring our $100 currency up to date and stop letting counterfeiters have a free meal ticket. Second, it would put the squeeze on drug trafficking organizations that have to launder vast sums of money to operate—making their costs of doing business significantly higher and hopefully turning piles of their money into worthless paper.

COUNTERFEITING DETERRENCE

The currency of this country faces a serious challenge from new technologies that enable counterfeiters to turn out excellent reproductions. According to the Secret Service, overseas counterfeiting of U.S. currency has increased dramatically. For example, from 1992 to 1993, counterfeit currency detected abroad increased 300 percent.

A number of analysts believe the threat to the U.S. currency is urgent. News reports say that intelligence experts in the United States and Israel are aware of a highly skilled group of counterfeiters operating out of Lebanon's Bekaa Valley. These counterfeiters, controlled by Syria and Iran, have turned out as much as $1 billion of extremely high-quality reproductions of the United States $100 bill.

We must be very concerned with what nations like Iran or Syria can do with $1 billion in bogus United States currency so convincing that it can be passed onto the international market. Would these poor countries use this money to purchase sophisticated weaponry that challenges the security of the region or of this country? Would they use this currency in an effort to destabilize U.S. currency? Would they use it to fund smaller scale but still serious terrorist activities throughout the world? No one knows.

The opening of the Russian Republics and the Eastern Bloc has also resulted in increased counterfeiting activity. Because the situation is changing in this part of the world so fast, it is difficult to determine the amount of counterfeiting that occurs there. According to the chief of the Russian Interior Ministry's Department of Economic Crimes, the amount of counterfeit United States currency confiscated by Russian authorities increased 10 times from 1992 to 1993. With organized crime increasingly taking hold in the Republics, counterfeiting has become a national cottage industry according to Moscow news reports. Because of mounting inflation of the ruble, foreign currency such as the U.S. $100 bill has a special place in that country's economic system, making it particularly attractive to counterfeiting.

What makes this situation all the more pressing is that the U.S. currency is among the most easy to counterfeit in the world. Although recently updated with a deterrent polyester strip, our bills do not use the watermarks or sophisticated dying and engraving techniques that other countries employ to make it difficult to reproduce their bills convincingly. Nor do we change the appearance of our currency from time-to-time to discourage counterfeiters as other countries do.

To address this threat, this legislation requires the Secretary of the Treasury to design a new $100 bill that incorporates some of the counterfeit-resistant features that other countries have adopted. The Treasury Department has already done substantial design work on a new $100 bill, and it is the intention of this legislation to permit the Secretary to draw on that work in meeting the requirements of the act.

MONEY LAUNDERING DETERRENCE

But aside from bringing our currency into modern times to address state-of-the-art counterfeiting technology, this legislation is designed to put a full court press on money laundering. We need to realize that the international drug industry is a multibillion-dollar, highly sophisticated enterprise. A single undercover operation in which Federal agents operated a fake bank to launder money recently netted $52 million in cash and assets. If we are really going to stop international drug trafficking and terrorist activities, we need to focus more on stopping the ease with which those organizations move their money internationally to finance their crimes.

My bill strikes two blows against money launderers. First, the bill requires all existing $100 denomination U.S. currency to be exchanged within a 6-month period. This would make drug traffickers who hoard vast amounts of hard currency hard-pressed to convert their existing cash into the new money. If they cannot convert the money within the specified time frame, their funds become worthless under the bill. Even if drug organizations could somehow convert their money within the exchange period, the likelihood of their being traced by currency transaction reporting increases substantially, as does the cost of laundering their ill-gotten gains. Of course, there is an exception for hardship cases in the bill where money has not been derived from unlawful activity.

Second, the bill establishes two new versions of the $100 bill: One for use at home and one for use abroad. The only business that relies on exporting large amounts of hard currency is drug trafficking. This provision would make money smuggled out of the United States worthless, turning the tables on drug traffickers who covertly move money from the streets of this country to foreign banks who launder it without reporting illicit transactions to the Treasury.

A U.S. citizen traveling abroad who wished to bring $100 currency with him would hardly be inconvenienced by this measure: A quick stop at a U.S. bank to convert their greenbacks into differently colored foreign-use bills would be all that is necessary—just like purchasing travelers' checks. The only ones inconvenienced would be drug traffickers who would hate to exchange their greenbacks for foreign-use currency at a U.S. bank because of currency transaction reporting requirements.

To the extent drug traffickers cannot exchange their $100 bills within the timeframe and they become worthless, this is a debt against the U.S. Treasury that can be written off to finance the costs of this legislation, and further, to pay off other obligations of the U.S. Treasury.

LET'S BEGIN A DISCUSSION ON THESE ISSUES

I know there will be opposition from some quarters to this proposal. The Federal Reserve likes the current situation and believes the good-old, easily copied $100 bill provides welcome stability to the international monetary system. The banks feel burdened by the currency transaction reporting requirements. Adding new counterfeit-resistant features to bills is not costless. The Drug Enforcement Administration supports the concept but some there would prefer to go further and establish domestic and foreign use versions of all our currency.

Let us begin a serious discussion and debate on the steps we should take to address high-technology counterfeiting and money laundering. If this proposal is not the best way to go, then let's work to fashion a measure that will take strong steps against these threats. I am not comfortable with the current situation: We face the threat of potentially billions of passable counterfeit U.S. dollars going into the hands of terrorists. We must do more to cripple the big business of drug trafficking. Continuing to put our collective heads in the sand will not suffice. I encourage my colleagues and the relevant agencies and others with expertise in these areas to consider and take the steps necessary to address these important issues.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

SUMMARY OF THE COUNTERFEITING AND MONEY LAUNDERING DETERRENCE ACT OF 1995

Section 1. The short title of the bill is the ''Counterfeiting and Money Laundering Deterrence Act of 1995.''

Section 2. Findings and Purposes. Congressional findings are summarized and the purposes of the bill to combat counterfeiting and money laundering are described.

Section 3. Counterfeit-Resistant $100 Denomination Currency.

The bill amends Title 31, United States Code, with new section 5123 to require the Secretary of the Treasury, in consultation with the Attorney General and the Administrator of the Drug Enforcement Administration, to design and designate new counterfeit-resistant $100 bills for domestic and foreign use within 6 months of enactment.

The new bills must have counterfeit-deterring features such as watermarks, multi-colored dyes, holograms, sophisticated engraving techniques etc.

The domestic use bills would be legal tender only in the U.S.; the foreign use bills would be legal tender abroad only. The two types of money could be exchanged at banks subject to U.S. currency transaction reporting requirements only. The domestic use bills have distinctly different coloring from the foreign use bills. This means money smuggled out of the country to be laundered at offshore banks that do not engage in currency transaction reporting would be worthless.

A 6-month currency exchange period would begin one year from the date of enactment. Old $100 bills must be exchanged for new domestic or foreign use $100 bills within this 6-month period, or they become worthless. The bill includes a process for extending the exchange period for hardship cases.

The currency exchange must occur at banks regulated by U.S. currency transaction reporting and anti-money laundering laws or at foreign banks that the Secretary of the Treasury finds by treaty or agreement abide by currency transaction reporting laws.

The Act would be financed by using credits obtained from extinguishing the Treasury's liability for $100 bills not exchanged within the exchange period. Additional credits so generated would be returned to the general fund.

Section 4. Notice of Currency Exchange Period. The Secretary must begin notifying foreign and domestic governments and financial institutions of the upcoming exchange period within 6 months of enactment.

By Mr. SIMPSON (for himself, Mr. ROCKEFELLER, Mr. THURMOND, Mr. MURKOWSKI, Mr. JEFFORDS, Mr. CRAIG, Mr. GRAHAM, and Mr. AKAKA):

S.J. Res. 26. A joint resolution designating April 9, 1995, and April 9, 1996, as ''National Former Prisoner of War Recognition Day''; to the Committee on the Judiciary.

THE NATIONAL FORMER PRISONER OF WAR RECOGNITION DAY

● Mr. SIMPSON. Mr. President, I am pleased to join with my good friend and predecessor as chairman of the Committee on Veterans Affairs, Senator ROCKEFELLER, in introducing a Joint resolution which would recognize the service and dedication of America's former prisoners of war [POW's]. The Joint resolution would designate April 9, 1995, and April 9, 1996, as ''National Former Prisoner of War Recognition day.'' April 9 is the anniversary of the fall of Bataan in 1942. On that day more Americans became POW's than any other day in our history.

Every American who dons the uniform of our country makes a unique commitment of service and duty to our country and to our fellow citizens. Many factors, some as random as fate itself, determine how that commitment will be realized. For some, military service may be little more than an office job here in the United States. For others, military service can combine bitter privation with the agony of combat. Perhaps no American veterans have been called upon to honor their commitment to our country under circumstances more difficult than those endured by our former POW's.

Former prisoners of war have seen combat. By definition they were close enough to the enemy to be captured; frequently after being wounded, shot down, or sunk by enemy action. But for them, the war didn't end when they were taken by the enemy, it was just beginning. At the worst, their experience was one of malnutrition, torture, and nonexistent medical care, combined with the burden of watching comrades die as fellow slave laborers while working under conditions that would make the worst villain of a Dickens novel look like a philanthropist.

Even under the best possible conditions, the POW experience places American service members in the position of being dependent upon our nation's enemies for every scrap of food, every bandage, every human need. In such circumstances, the reward for treason, or even cooperation, is high. The penalty for resistance and loyalty is immediate, frequently painful and sometimes fatal. This resolution recognizes the sacrifice and loyalty of the POW's who maintained their commitment of service to our country. In so doing, it helps fulfill the duty we have to former POW's. A duty derived from the faithful discharge of their duty to us.

Mr. President, in this century 142,257 American servicemembers have become POW's. For over 17,000 of them, the experience was fatal. They died while in the hands of our enemies. Of the 125,202 who returned to our shores, only about 62,000 remain alive today.

This Joint resolution commemorates the service of former POW's who sustained their commitment to our country under circumstances that few of us can imagine, and none would willingly endure. I ask this body to honor the memory of those who have already died; I urge the Senate to express its gratitude to those still alive; and I call upon my colleagues to join with Senator ROCKEFELLER, members of the committee on Veterans' Affairs, and myself in sponsoring this Joint resolution.●

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. BREAUX, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 141

At the request of Mrs. KASSEBAUM, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 141, a bill to repeal the Davis-Bacon Act of 1931 to provide new job opportunities, effect significant cost savings on Federal construction contracts, promote small business participation in Federal contracting, reduce unnecessary paperwork and reporting requirements, and for other purposes.

S. 210

At the request of Mr. THOMAS, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 210, a bill to amend title XVIII of the Social Security Act to provide for coverage under part B of the medicare program of emergency care and related services furnished by rural emergency access care hospitals.

S. 227

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 227, a bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions and for other purposes.

S. 233

At the request of Mr. MCCAIN, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 233, a bill to provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes.

S. 245

At the request of Mr. COHEN, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 245, a bill to provide for enhanced penalties for health care fraud, and for other purposes.

S. 262

At the request of Mr. GRASSLEY, the names of the Senator from Nebraska [Mr. KERREY], the Senator from Utah [Mr. HATCH], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

SENATE JOINT RESOLUTION 17

At the request of Mr. KEMPTHORNE, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of Senate Joint Resolution 17, a joint resolution naming the CVN–76 aircraft carrier as the U.S.S. Ronald Reagan.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, January 31, 1995 at 9:30 a.m. in open session to consider the nomination of Eleanor J. Hill to be inspector general of the Department of Defense.

Immediately following, the Committee will meet in closed session to receive an intelligence briefing on the smuggling of nuclear material and the role of international crime organizations; and on the proliferation of cruise and ballistic missiles.