

bill, the authority will be extended without interruption. I hope that the House will join us without delay both in extending the redaction authority and in expanding the scope of its protections to include family members.

I also hope that we will move quickly to pass the other important provisions of CSIA so that we can better protect the dedicated women and men throughout the judiciary in this country who do a tremendous job under challenging circumstances.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment that is at the desk be agreed to, the bill, as amended, be read a third time and passed, the title amendment be agreed to, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statement relating to the bill be printed in the RECORD.

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

The amendment (No. 2521) was agreed to, as follows:

AMENDMENT NO. 2521

Strike all after the enacting clause and insert the following:

**SECTION 1. PROTECTION OF FAMILY MEMBERS.**

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in subparagraph (A), by inserting “or a family member of that individual” after “that individual”; and

(2) in subparagraph (B)(i), by inserting “or a family member of that individual” after “the report”.

**SEC. 2. EXTENSION OF PUBLIC FILING REQUIREMENT.**

Section 105(b)(3)(E) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking “2005” each place it appears and inserting “2009”.

The amendment (No. 2522) was agreed to, as follows:

AMENDMENT NO. 2522

(Purpose: To amend the title of the bill.)

At the appropriate place, insert the following:

Amend the title so as to read: “To amend the Ethics in Government Act of 1978 to protect family members of filers from disclosing sensitive information in a public filing and to extend for 4 years the authority to redact financial disclosure statements of judicial employees and judicial officers.”

The bill (S. 1558), as amended, was read the third time and passed, as follows:

S. 1558

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

**SECTION 1. PROTECTION OF FAMILY MEMBERS.**

Section 105(b)(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in subparagraph (A), by inserting “or a family member of that individual” after “that individual”; and

(2) in subparagraph (B)(i), by inserting “or a family member of that individual” after “the report”.

**SEC. 2. EXTENSION OF PUBLIC FILING REQUIREMENT.**

Section 105(b)(3)(E) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amend-

ed by striking “2005” each place it appears and inserting “2009”.

**PROHIBITION ON THE TRAFFICKING OF GOODS AND SERVICES**

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 277, S. 1095.

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

The legislative clerk read as follows:

A bill (S. 1095) to amend chapter 113 of title 18, United States Code, to clarify the prohibition on the trafficking in goods or services, and for other purposes.

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

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1095

*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 “Protecting American Goods and Services Act of 2005”.

**SEC. 2. PROHIBITION ON TRAFFICKING OF CERTAIN GOODS AND SERVICES.**

[(A) IN GENERAL.—Section 2320 of title 18, United States Code, is amended—

[(1) by striking subsection (a) and inserting the following:

[(a)(1) Any person who intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services—

[(A) if an individual, shall be fined not more than \$2,000,000, imprisoned not more than 10 years, or both; and

[(B) if a person other than an individual, shall be fined not more than \$5,000,000.

[(2) Any person who possesses goods with a counterfeit mark with an intent to traffic such goods—

[(A) if an individual, shall be fined not more than \$2,000,000, or imprisoned not more than 10 years, or both; and

[(B) if a person other than an individual, shall be fined not more than \$5,000,000.

[(3) In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person—

[(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both; and

[(B) if other than an individual, shall be fined not more than \$15,000,000.”; and

[(2) in subsection (b), by striking paragraph (2) and inserting the following:

[(2) the term ‘traffic’ means—

[(A) transport, transfer, or otherwise dispose of, to another as consideration for anything of value or without consideration; or

[(B) make or obtain control of with intent to so transport, transfer, or dispose of; and”.

[(b) PROHIBITION OF TRANSPORT OF COUNTERFEIT GOODS OR UNAUTHORIZED COPIES AND PHONORECORDS OF COPYRIGHTED WORKS.—

[(1) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by inserting after section 2320 the following:

[(2) **2320A. Transport of counterfeit goods and unauthorized copyrighted works into or out of the United States**

[(a) DEFINITIONS.—In this section—

[(1) the terms ‘copies’ and ‘phonorecords’ have the respective meanings given under section 101 of title 17;

[(2) the term ‘counterfeit mark’ has the meaning given under section 2320(e)(1); and

[(3) the term ‘United States’ means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

[(b) OFFENSE.—Any person who intentionally transports goods bearing a counterfeit mark or copies or phonorecords of a copyrighted work not authorized by the copyright holder into or out of the United States for the purposes of commercial advantage or private financial gain shall be fined not more than \$100,000, imprisoned not more than 10 years, or both.”.

[(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2320 the following:

[(2320A. Transport of counterfeit goods and unauthorized copyrighted works into or out of the United States.”.]

**SECTION 1. TRAFFICKING DEFINED.**

(a) COUNTERFEIT GOODS OR SERVICES.—Section 2320(e) of title 18, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

“(2) the term ‘traffic’ means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;”;

(2) by redesignating paragraph (3) as paragraph (4) and inserting the following:

“(3) the term ‘financial gain’ includes the receipt, or expected receipt, of anything of value; and”.

(b) CONFORMING AMENDMENTS.—

(1) SOUND RECORDINGS AND MUSIC VIDEOS OF LIVE MUSICAL PERFORMANCES.—Section 2319A(e) of title 18, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) the term ‘traffic’ has the same meaning as in section 2320(e) of this title.”.

(2) COUNTERFEIT LABELS FOR PHONORECORDS, COMPUTER PROGRAMS, ETC.—Section 2318(b) of title 18, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2) the term ‘traffic’ has the same meaning as in section 2320(e) of this title.”.

(3) ANTI-BOOTLEGGING.—Section 1101 of title 17, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) DEFINITION.—As used in this section, the term ‘traffic’ has the same meaning as in section 2320(e) of title 18, United States Code.”.

Mr. CORNYN. Mr. President, I rise today to thank my colleagues for joining me in the fight against global counterfeiting—a plague on our economy, on the safety of our citizens, and on our national security.

S. 1095, the Protecting American Goods and Services Act, or PAGS, is important legislation designed to combat the trafficking of illegitimate goods throughout the world—and I look forward to working with our colleagues in the House of Representatives to send it to the President.

I am particularly pleased to work with Senator LEAHY in our continued bipartisan effort to protect intellectual property rights as well as to work on other important issues. Recently, we have worked together on a matter near

and dear to my heart—good government legislation related to the Freedom of Information Act, and it indeed has been a pleasure to work with the ranking member of the Judiciary Committee and his staff again.

Mr. President, the rampant distribution of illegitimate goods—be it counterfeited products, illegal copies of copyrighted works or any other form of piracy—undermines property rights, threatens American jobs, decreases consumer safety and, often times, supports organized crime and terrorist activity.

Amazingly, it is estimated that between 5 percent and 7 percent of worldwide trade is conducted with counterfeit goods and services. According to FBI estimates, counterfeiting costs U.S. businesses as much as \$200–\$250 billion annually—and that costs Americans their jobs—more than 750,000 jobs according to U.S. Customs.

In recent years, this plague on global trade has grown significantly. According to the World Customs Organization and Interpol, the global trade in illegitimate goods has increased from \$5.5 billion in 1992 to more than \$600 billion per year today; that is, \$600 billion per year illegally extracted from the global economy.

But perhaps most troubling, the counterfeit trade threatens our safety and our security. Counterfeit goods undermine our confidence in the reliability of our goods and service. For example, the Federal Aviation Administration estimates that 2 percent of the 26 million airline parts installed each year are counterfeit. And the Federal Drug Administration estimates that as much as 10 percent of pharmaceuticals are counterfeit. Worse yet—evidence indicates that the counterfeit trade supports terrorist activities. Indeed, al-Qaeda training manuals recommended the sale of fake goods to raise revenue.

And the reach of counterfeiting runs deep in my own home State of Texas. Data is difficult to collect, but a 1997 piece detailing Microsoft's efforts to combat counterfeiting and piracy—while dated—pointed out that this type of activity costs Texas over 10,000 jobs and almost \$1 billion. Today, we know those numbers are much higher.

Mr. President, we must act to stop this illegal activity.

The legislation that we are sending over to the House today, the Protecting American Goods and Services Act, is not complicated, it is not long—but its global impact will be significant. The legislation is designed to provide law enforcement with additional tools to curb the flow of these illegitimate goods and it is perhaps even more critical for businesses, large and small, throughout America and for ensuring the safety of consumers around the globe.

Those who traffic in counterfeit goods put Americans in danger, support terrorism and undermine the health of our Nation's economy. The

PAGS Act fills certain important gaps in current counterfeiting law by clarifying the term “trafficking” to ensure that it is illegal to: Possess counterfeit goods with the intention of selling them; give away counterfeit goods in exchange for some future benefit—in effect, the “bartering” of counterfeit goods in such a way that avoids criminality and import or export counterfeit goods or unauthorized copies of copyrighted works.

This bill will protect property rights, protect consumer safety, preserve American jobs and bolster the American economy by cracking down on the trade of illegal counterfeit goods and services.

Each of these items was highlighted by the Department of Justice in its October, 2004 report on its Task Force on Intellectual Property. In it, the Department describes the significant limitation law enforcement often times faces in pursuing counterfeiters and offers, among others, the principles embraced in the Protecting American Goods and Services Act, as possible solutions to these obstacles.

This legislation, and other reforms, will help turn the tide of the growing counterfeit trade. The legislation is critically important to law enforcement—but it is even more critical for businesses, large and small, throughout America—including in my home state of Texas—as well as for ensuring the safety of consumers around the globe. Those who traffic in counterfeit goods put Americans in danger, support terrorism and undermine the health of our Nation's economy. It is time to put an end to this scourge on society.

I look forward to working with my colleagues to move this legislation forward, and in so doing, protect property rights, protect consumer safety, preserve American jobs and bolster the American economy.

Mr. LEAHY. Today, I am pleased that the Senate is passing S. 1095, the Protecting American Goods and Services Act of 2005, which is the latest of the bipartisan efforts that Senator CORNYN and I have made to improve the lives of Americans through effective and efficient government. The Protecting American Goods and Services Act of 2005 will strengthen our ability to combat the escalating problem of counterfeiting worldwide. In order to effectively fight intellectual property theft, we need stiff penalties for counterfeiters and those who are caught with counterfeit goods with the intent to traffic their false wares. Ours is a short bill—indeed, it is only two pages long—but it will have powerful global implications in the fight against piracy.

Counterfeiting is a growing problem that costs our economy hundreds of billions of dollars every year and has been linked to organized crime, including terrorist organizations. According to the International Anti-Counterfeiting Coalition, counterfeit parts have been discovered in helicopters

sold to NATO, in jet engines, bridge joints, brake pads, and fasteners in equipment designed to prevent nuclear reactor meltdowns. The World Health Organization estimates that the market for counterfeit drugs is about \$32 billion each year.

Several years ago, Senator HATCH joined me in sponsoring the Anti-counterfeiting Consumer Protection Act of 1996, which addressed counterfeiting by amending several sections of our criminal and tariff codes. That law made important changes, particularly by expanding RICO, the Federal antiracketeering law, to cover crimes involving counterfeiting and copyright and trademark infringement. Then, as now, trafficking in counterfeit goods hurts purchasers, State and Federal Governments, and economies at every level.

Perhaps most disturbingly, the U.S. Customs Service reports that terrorists have used transnational counterfeiting operations to fund their activities: The sale of counterfeit and pirated music, movies, software, T-shirts, clothing, and fake drugs “accounts for much of the money the international terrorist network depends on to feed its operations.”

Last year, as in years past, I worked with Senator ALLEN on an amendment to the Foreign Operations bill that provides the State Department with vital resources to combat piracy of U.S. goods abroad. The bill we ultimately passed included \$3 million for this important purpose. Yet more work both at home and abroad remains. When you consider that the economic impact of tangible piracy in counterfeit goods is estimated to be roughly \$350 billion a year and to constitute between 5 percent and 7 percent of worldwide trade, a few million dollars is a worthwhile investment.

We have certainly seen how this form of theft touches the lives of hard-working Vermonters. Burton Snowboards is a small company, whose innovation has made it an industry leader in snowboarding equipment and apparel. Unfortunately, knockoff products carrying Burton's name have been found across the globe. Vanessa Price, a representative of Burton, testified about counterfeiting at the Judiciary Committee's March 23, 2004, hearing on this topic. In addition to learning about the economic costs of counterfeiting, I asked her after the hearing about the risks posed to consumers by these goods. Her answer was chilling: “In the weeks since my Senate testimony, I discovered a shipment of counterfeit Burton boots for sale through a discount sports outfit . . . After examining the poor quality of the counterfeit boots, we determined that anyone using the boots for snowboarding risks injury due to a lack of reinforcement and support in the product's construction.”

Customers and businesses lose out to counterfeiters in other ways, too. SB Electronics in Barre, VT has seen its

capacitors reverse engineered and its customers lost to inferior copycat models. Vermont Tubbs, a furniture manufacturer in Rutland, has seen its designs copied, produced offshore with inferior craftsmanship and materials, and then reimported, so that the company is competing against cheaper versions of its own products. And Hubbardton Forge in Castleton, VT has seen its beautiful and original lamps counterfeited and then sold within the United States at prices—and quality—far below their own. This is wrong. It is unfair to consumers who deserve the high quality goods they think they are paying for, and it is unfair to innovators who play by the rules and deserve to profit from their labor.

The Protecting American Goods and Services Act of 2005 will help to combat this growing scourge. It amends the definition of trafficking in the counterfeit law to criminalize the possession of counterfeit goods with the intent to sell or traffic in those goods, as well as to include any distribution of counterfeits with the expectation of gaining something of value—criminals should not be able to skirt the law simply because they barter illegal goods and services in exchange for their illicit wares. Finally, the bill's new definition will criminalize the importation and exportation of counterfeit goods, as well as of bootleg copies of copyrighted works into and out of the United States.

By tying off these loopholes and improving U.S. laws on counterfeiting, we will be sending a powerful message to the criminals who belong in jail, and to our innovators.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

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

The bill (S. 1095), as amended, was read the third time and passed.

#### STOP COUNTERFEITING IN MANUFACTURED GOODS ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 278, S. 1699.

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

The legislative clerk read as follows:

A bill (S. 1699) to amend title 18, United States Code, to provide criminal penalties for trafficking in counterfeit marks.

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

S. 1699

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

#### SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the “Stop Counterfeiting in Manufactured Goods Act”.

(b) FINDINGS.—The Congress finds that—

(1) the United States economy is losing millions of dollars in tax revenue and tens of thousands of jobs because of the manufacture, distribution, and sale of counterfeit goods;

(2) the Bureau of Customs and Border Protection estimates that counterfeiting costs the United States \$200 billion annually;

(3) counterfeit automobile parts, including brake pads, cost the auto industry alone billions of dollars in lost sales each year;

(4) counterfeit products have invaded numerous industries, including those producing auto parts, electrical appliances, medicines, tools, toys, office equipment, clothing, and many other products;

(5) ties have been established between counterfeiting and terrorist organizations that use the sale of counterfeit goods to raise and launder money;

(6) ongoing counterfeiting of manufactured goods poses a widespread threat to public health and safety; and

(7) strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners.

#### SEC. 2. TRAFFICKING IN COUNTERFEIT MARKS.

Section 2320 of title 18, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after “such goods or services” the following: “, or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive.”.

(2) Subsection (b) is amended to read as follows:

“(b)(1) The following property shall be subject to forfeiture to the United States and no property right shall exist in such property:

“(A) Any article bearing or consisting of a counterfeit mark used in committing a violation of subsection (a).

“(B) Any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

“(2) The provisions of chapter 46 of this title relating to civil forfeitures, including section 983 of this title, shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States, shall order that any forfeited article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States—

“(i) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense;

“(ii) any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of the offense; and

“(iii) any article that bears or consists of a counterfeit mark used in committing the offense.

“(B) The forfeiture of property under subparagraph (A), including any seizure and dis-

position of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. Notwithstanding section 413(h) of that Act, at the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed.

“(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the mark and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

“(5) The term ‘victim’, as used in paragraph (4), has the meaning given that term in section 3663A(a)(2).”.

(3) Subsection (e)(1) is amended—

(A) by striking subparagraph (A) and inserting the following:

“(A) a spurious mark—

“(i) that is used in connection with trafficking in any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature;

“(ii) that is identical with, or substantially indistinguishable from, a mark registered on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered;

“(iii) that is applied to or used in connection with the goods or services for which the mark is registered with the United States Patent and Trademark Office, or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is designed, marketed, or otherwise intended to be used on or in connection with the goods or services for which the mark is registered in the United States Patent and Trademark Office; and

“(iv) the use of which is likely to cause confusion, to cause mistake, or to deceive; or”;

(B) by amending the matter following subparagraph (B) to read as follows:

“but such term does not include any mark or designation used in connection with goods or services, or a mark or designation applied to labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature used in connection with such goods or services, of which the manufacturer or producer was, at the time of the manufacture or production in question, authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.”.

(4) Section 2320 is further amended—

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following:

“(f) Nothing in this section shall entitle the United States to bring a criminal cause of action under this section for the repackaging of genuine goods or services not intended to deceive or confuse.”.

#### SEC. 3. SENTENCING GUIDELINES.

(a) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review