

110TH CONGRESS
2^D SESSION

S. 3351

To enhance drug trafficking interdiction by creating a Federal felony for operating or embarking in a submersible or semi-submersible vessel without nationality and on an international voyage.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2008

Mr. BIDEN (for himself, Mr. GRASSLEY, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To enhance drug trafficking interdiction by creating a Federal felony for operating or embarking in a submersible or semi-submersible vessel without nationality and on an international voyage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drug Trafficking
5 Interdiction Assistance Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds and declares that operating or em-
8 barking in a submersible or semi-submersible vessel with-

1 out nationality and on an international voyage is a serious
 2 international problem, facilitates transnational crime, in-
 3 cluding drug trafficking, and terrorism, and presents a
 4 specific threat to the safety of maritime navigation and
 5 the security of the United States.

6 **SEC. 3. OPERATION OF SUBMERSIBLE OR SEMI-SUBMERS-**
 7 **IBLE VESSEL WITHOUT NATIONALITY.**

8 (a) IN GENERAL.—Chapter 111 of title 18 is amend-
 9 ed by adding at the end the following new section:

10 **“SEC. 2285. OPERATION OF SUBMERSIBLE OR SEMI-SUB-**
 11 **MERSIBLE VESSEL WITHOUT NATIONALITY.**

12 “(a) OFFENSES.—

13 “(1) IN GENERAL.—Whoever knowingly or in-
 14 tentiously operates by any means or embarks in any
 15 submersible or semi-submersible vessel that is with-
 16 out nationality and that is navigating or has navi-
 17 gated into, through, or from waters beyond the outer
 18 limit of the territorial sea of a single country or a
 19 lateral limit of that country’s territorial sea with an
 20 adjacent country, with the intent to evade detection,
 21 shall be punished as prescribed in subsection (h).

22 “(2) ATTEMPTS AND CONSPIRACIES.—Whoever
 23 attempts or conspires to violate this section shall be
 24 punished as prescribed in subsection (h).

25 “(b) DEFINITIONS.—In this section:

1 “(1) SEMI-SUBMERSIBLE VESSEL.—The term
2 ‘semi-submersible vessel’ means any watercraft con-
3 structed or adapted to be capable of operating with
4 most of its hull and bulk under the surface of the
5 water, including both manned and unmanned
6 watercraft.

7 “(2) SUBMERSIBLE VESSEL.—The term ‘sub-
8 mersible vessel’ means a watercraft that is capable
9 of operating completely below the surface of the
10 water, including both manned and unmanned
11 watercraft.

12 “(3) VESSEL WITHOUT NATIONALITY.—The
13 term ‘vessel without nationality’ has the same mean-
14 ing as section 70502(d) of title 46, United States
15 Code.

16 “(4) EVADE DETECTION.—The term ‘evade de-
17 tection’ includes the indicia in section 70507
18 (b)(1)(A), (E), (F), (G), (b)(4), (b)(5), and (b)(6) of
19 title 46, United States Code.

20 “(c) EXTRATERRITORIAL JURISDICTION.—There is
21 extraterritorial Federal jurisdiction over the offenses de-
22 scribed in this section, including an attempt or conspiracy
23 to commit such offense.

1 “(d) CLAIM OF NATIONALITY OR REGISTRY.—A
2 claim of nationality or registry under this section includes
3 only—

4 “(1) possession on board the vessel and produc-
5 tion of documents evidencing the vessel’s nationality
6 as provided in article 5 of the 1958 Convention on
7 the High Seas;

8 “(2) flying its nation’s ensign or flag; or

9 “(3) a verbal claim of nationality or registry by
10 the master or individual in charge of the vessel.

11 “(e) AFFIRMATIVE DEFENSE.—

12 “(1) IN GENERAL.—It is an affirmative defense
13 to a prosecution under this section, which the de-
14 fendant shall prove by a preponderance of the evi-
15 dence, that any submersible or semi-submersible ves-
16 sel that the defendant operated by any means or em-
17 barked, at the time of the offense—

18 “(A) was a vessel of the United States or
19 lawfully registered in a foreign nation as
20 claimed by the master or individual in charge of
21 the vessel when requested to make a claim by
22 an officer of the United States authorized to
23 enforce applicable provisions of United States
24 law;

1 “(B) was classed by and designed in ac-
2 cordance with the rules of a classification soci-
3 ety;

4 “(C) was lawfully operated in a govern-
5 ment-regulated or -licensed activity, including
6 commerce, research, or exploration; or

7 “(D) was equipped with and using an op-
8 erable automatic identification system vessel
9 monitoring system, or long range identification
10 and tracking system.

11 “(2) PRODUCTION OF DOCUMENTS.—The af-
12 firmative defenses provided by this subsection are
13 proved conclusively by the production of—

14 “(A) government documents evidencing the
15 vessel’s nationality at the time of the offense as
16 provided in article 5 of the 1958 Convention on
17 the High Seas;

18 “(B) a certificate of classification issued by
19 the vessel’s classification society upon comple-
20 tion of relevant classification surveys and valid
21 at the time of the offense; or

22 “(C) government documents evidencing li-
23 censure, regulation, or registration for research
24 or exploration.

1 “(f) FEDERAL ACTIVITIES.—Nothing in this section
2 applies to lawfully authorized activities carried out by, or
3 at the direction of, the United States Government.

4 “(g) APPLICABILITY OF OTHER PROVISIONS.—Sec-
5 tions 70504 and 70505 of title 46, United States Code,
6 apply to this section.

7 “(h) PENALTIES.—A person violating this section
8 shall be fined under this title, imprisoned not more than
9 15 years, or both.”.

10 (b) CONFORMING AMENDMENT.—The table of sec-
11 tions for chapter 111 of title 18, United States Code, is
12 amended by adding at the end the following:

“Sec. 2285. Operation of submersible or semi-submersible vessel without na-
tionality.”.

13 **SEC. 4. DIRECTIVE TO THE UNITED STATES SENTENCING**
14 **COMMISSION.**

15 (a) IN GENERAL.—Pursuant to its authority under
16 section 994(p) of title 28, United States Code, and in ac-
17 cordance with this section, the United States Sentencing
18 Commission shall promulgate sentencing guidelines (in-
19 cluding policy statements) or amend existing sentencing
20 guidelines (including policy statements) to provide ade-
21 quate penalties for persons convicted of knowingly or in-
22 tentiously operating by any means or embarking in any
23 submersible or semi-submersible vessel as defined in sec-
24 tion 3.

1 (b) REQUIREMENTS.—In carrying out this section,
2 the United States Sentencing Commission shall—

3 (1) ensure that the sentencing guidelines and
4 policy statements reflect the serious nature of the of-
5 fenses described in section 3 and the need for deter-
6 rence to prevent such offenses;

7 (2) account for any aggravating or mitigating
8 circumstances that might justify exceptions, includ-
9 ing—

10 (A) the use of a submersible or semi-sub-
11 mersible vessels described in section 3 to facili-
12 tate other felonies;

13 (B) the repeated use of submersible or
14 semi-submersible vessel described in section 3
15 to facilitate other felonies, including whether
16 such use is part of an ongoing commercial orga-
17 nization or enterprise;

18 (C) whether the use of submersible or
19 semi-submersible vessel involves a pattern of
20 continued and flagrant violations;

21 (D) whether the persons operating or em-
22 barking in a submersible or semi-submersible
23 vessel willfully caused, attempted to cause, or
24 permitted the destruction or damage of such

1 vessel or failed to heave to when directed by law
2 enforcement officers; and

3 (E) circumstances for which the sentencing
4 guidelines (and policy statements) currently
5 provide sentencing enhancements;

6 (3) ensure reasonable consistency with other
7 relevant directives, other sentencing guidelines and
8 policy statements, and statutory provisions;

9 (4) make any necessary and conforming
10 changes to the sentencing guidelines and policy
11 statements; and

12 (5) ensure that the sentencing guidelines and
13 policy statements adequately meet the purposes of
14 sentencing set forth in section 3553(a)(2) of title 18,
15 United States Code.

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