

Calendar No. 116

110TH CONGRESS
2D SESSION

S. 3526

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 2008

Mr. REID (for Mr. BIDEN (for himself, Mr. GRASSLEY, Mr. GRAHAM, Mrs. FEINSTEIN, Mr. LUGAR, Mr. MARTINEZ, and Mr. NELSON of Florida)) introduced the following bill; which was read the first time

NOVEMBER 18, 2008

Read the second time and placed on the calendar under authority of the order of the Senate of November 17 (legislative day, September 17), 2008

A BILL

To enhance drug trafficking interdiction by creating a Federal felony relating to 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Drug Trafficking Ves-
3 sel Interdiction Act of 2008”.

4 **SEC. 2. FINDINGS AND DECLARATIONS.**

5 Congress finds and declares that operating or em-
6 barking in a submersible or semi-submersible vessel with-
7 out nationality and on an international voyage is a serious
8 international problem, facilitates transnational crime, in-
9 cluding drug trafficking, and terrorism, and presents a
10 specific threat to the safety of maritime navigation and
11 the security of the United States.

12 **SEC. 3. OPERATION OF SUBMERSIBLE OR SEMI-SUBMERS-
13 IBLE VESSEL WITHOUT NATIONALITY.**

14 (a) IN GENERAL.—Chapter 111 of title 18, United
15 States Code, is amended by adding at the end the fol-
16 lowing new section:

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

19 “(a) OFFENSE.—Whoever knowingly operates, or at-
20 tempts or conspires to operate, by any means, or embarks
21 in any submersible or semi-submersible vessel that is with-
22 out nationality and that is navigating or has navigated
23 into, through, or from waters beyond the outer limit of
24 the territorial sea of a single country or a lateral limit
25 of that country’s territorial sea with an adjacent country,

1 with the intent to evade detection, shall be fined under
2 this title, imprisoned not more than 15 years, or both.

3 “(b) DEFINITIONS.—In this section—

4 “(1) the term ‘submersible vessel’ means a
5 watercraft that is capable of operating completely
6 below the surface of the water, and includes manned
7 and unmanned watercraft;

8 “(2) the term ‘semi-submersible vessel’ means
9 any watercraft constructed or adapted to be capable
10 of operating with most of its hull and bulk under the
11 surface of the water, and includes manned or un-
12 manned watercraft;

13 “(3) the term ‘vessel without nationality’ has
14 the same meaning given that term in section
15 70502(d) of title 46;

16 “(4) the term ‘evade detection’ includes the in-
17 dicia set forth in section 70507(b)(1)(A), (E), (F),
18 (G), (b)(4), (5), and (6) of title 46; and

19 “(5) the term ‘vessel of the United States’ has
20 the same meaning given that term in section
21 70502(b) of title 46.

22 “(c) EXTRATERRITORIAL JURISDICTION.—There is
23 extraterritorial Federal jurisdiction over an offense under
24 this section, including an attempt or conspiracy to commit
25 such an 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 DEFENSES.—

12 “(1) IN GENERAL.—It is an affirmative defense
13 to a prosecution for a violation of this section, which
14 the defendant has the burden to prove by a prepon-
15 derance of the evidence, that any submersible or
16 semi-submersible vessel that the defendant operated
17 by any means or embarked in at the time of the of-
18 fense—

19 “(A) was a vessel of the United States or
20 lawfully registered in a foreign nation as
21 claimed by the master or individual in charge of
22 the vessel when requested to make a claim by
23 an officer of the United States authorized to
24 enforce applicable provisions of United States
25 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 government-
5 regulated or licensed activity, including com-
6 merce, research, or exploration; or

7 “(D) was equipped with and using an op-
8 erable automatic identification system, vessel
9 monitoring system, or a long range identifica-
10 tion 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 apply to this section.”

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 111 of title 18, United States
8 Code, is amended by adding at the end the following new
9 item:

“2285. Operation of submersible or semi-submersible vessel without nation-
ality.”.

10 SEC. 4. SENTENCING GUIDELINES.

11 (a) IN GENERAL.—Pursuant to its authority under
12 section 994(p) of title 28, United States Code, and in ac-
13 cordance with this section, the United States Sentencing
14 Commission shall promulgate sentencing guidelines (in-
15 cluding policy statements) or amend existing sentencing
16 guidelines (including policy statements) to provide ade-
17 quate penalties for persons convicted of knowingly oper-
18 ating by any means or embarking in any submersible or
19 semi-submersible vessel as defined in section 2285 of title
20 18, United States Code.

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

23 (1) ensure that the sentencing guidelines and
24 policy statements reflect the serious nature of the of-

1 fense described in section 2285 of title 18, United
2 States Code, and the need for deterrence to prevent
3 such offenses;

4 (2) account for any aggravating or mitigating
5 circumstances that might justify exceptions, includ-
6 ing—

7 (A) the use of a submersible or semi-sub-
8 mersible vessels described in section 2285 of
9 title 18, United States Code, to facilitate other
10 felonies;

11 (B) the repeated use of a submersible or
12 semi-submersible vessel described in section
13 2285 of title 18, United States Code, to facili-
14 tate other felonies, including whether such use
15 is part of an ongoing commercial organization
16 or enterprise;

17 (C) whether the use of such a vessel in-
18 volves a pattern of continued and flagrant viola-
19 tions of section 2285 of title 18, United States
20 Code;

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) provide sen-
5 tencing 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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