

111TH CONGRESS  
1ST SESSION

# H. R. 1440

To amend title 46, United States Code, to improve maritime law enforcement.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2009

Mr. LOBIONDO (for himself, Mr. YOUNG of Alaska, and Mr. OLSON) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 46, United States Code, to improve maritime law enforcement.

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 title may be cited as the “Maritime Law En-  
5       forcement Improvement Act of 2009”.

6       **SEC. 2. MARITIME LAW ENFORCEMENT.**

7       (a) IN GENERAL.—Subtitle VII of title 46, United  
8       States Code, is amended by adding at the end the fol-  
9       lowing:

1           **“CHAPTER 707—MARITIME LAW**  
2                                   **ENFORCEMENT**

“Sec.

“70701. Offense.

“70702. Attempt or conspiracy.

“70703. Affirmative defenses.

“70704. Penalties.

“70705. Criminal forfeiture.

“70706. Civil forfeiture.

“70707. Extension beyond territorial jurisdiction.

“70708. Claim of failure to comply with international law; jurisdiction of court.

“70709. Federal activities.

“70710. Definitions.

3   **“§ 70701. Offense**

4           “It shall be unlawful for any person on board a cov-  
5   ered vessel to transport or facilitate the transportation,  
6   harboring, or concealment of an alien on board such vessel  
7   knowing or having reason to believe that the alien is at-  
8   tempting to unlawfully enter the United States.

9   **“§ 70702. Attempt or conspiracy**

10          “Any person on board a covered vessel who attempts  
11   or conspires to commit a violation of section 70701 shall  
12   be subject to the same penalties as those prescribed for  
13   the violation, the commission of which was the object of  
14   the attempt or conspiracy.

15   **“§ 70703. Affirmative defenses**

16          “It is an affirmative defense to a prosecution under  
17   this section, which the defendant must prove by a prepon-  
18   derance of the evidence, that—

19                  “(1)(A) the alien was on board pursuant to a  
20                  rescue at sea, or was a stowaway; or

1           “(B) the entry into the United States was a  
2           necessary response to an imminent threat of death  
3           or serious bodily injury to the alien;

4           “(2) the defendant, as soon as reasonably prac-  
5           ticable, informed the Coast Guard of the presence of  
6           the alien on the vessel and the circumstances of the  
7           rescue; and

8           “(3) the defendant complied with all orders  
9           given by law enforcement officials of the United  
10          States.

11       **“§ 70704. Penalties**

12          “Any person who commits a violation of this chapter  
13       shall be imprisoned for not more than 20 years or fined  
14       not more than \$250,000, or both; except that—

15               “(1) in the case of an offense that involves the  
16               transit of the person’s spouse, child, sibling, parent,  
17               grandparent, niece, or nephew, the person shall be  
18               imprisoned for not more than 1 year or fined not  
19               more than \$100,000, or both;

20               “(2) in any case in which the violation causes  
21               serious bodily injury to any person, regardless of  
22               where the injury occurs, the person shall be impris-  
23               oned for not more than 30 years or fined not more  
24               than \$500,000, or both; and

1           “(3) in any case in which the violation causes  
2           or results in the death of any person regardless of  
3           where the death occurs, the person shall be impris-  
4           oned for not more than life or fined not more than  
5           \$1,000,000, or both.

6           **“§ 70705. Criminal forfeiture**

7           “‘The court, at the time of sentencing a person con-  
8           victed of an offense under this chapter, shall order for-  
9           feited to the United States any vessel used in the offense  
10          in the same manner and to the same extent as if it were  
11          a vessel used in an offense under section 274 of the Immi-  
12          gration and Nationality Act (8 U.S.C. 1324).

13          **“§ 70706. Civil forfeiture**

14          “‘A vessel that has been used in the commission of  
15          a violation of this chapter shall be seized and subject to  
16          forfeiture in the same manner and to the same extent as  
17          if it were used in the commission of a violation of section  
18          274(a) of the Immigration and Nationality Act (8 U.S.C.  
19          1324(a)).

20          **“§ 70707. Extension beyond territorial jurisdiction**

21          “‘Sections 70701 and 70702 apply even though the  
22          act is committed outside the territorial jurisdiction of the  
23          United States.

1 **“§ 70708. Claim of failure to comply with inter-**  
2 **national law; jurisdiction of court**

3 “A claim of failure to comply with international law  
4 in the enforcement of this chapter may be invoked as a  
5 basis for a defense solely by a foreign nation. A failure  
6 to comply with international law shall not divest a court  
7 of jurisdiction or otherwise constitute a defense to any  
8 proceeding under this chapter.

9 **“§ 70709. Federal activities**

10 “Nothing in this chapter applies to otherwise lawful  
11 activities carried out by or at the direction of the United  
12 States Government.

13 **“§ 70710. Definitions**

14 “In this chapter, the following definitions apply:

15 “(1) ALIEN.—The term ‘alien’ has the meaning  
16 given that term in section 70105(f).

17 “(2) COVERED VESSEL.—The term ‘covered  
18 vessel’ means a vessel of the United States, or a ves-  
19 sel subject to the jurisdiction of the United States,  
20 that is less than 300 gross tons (or an alternate ton-  
21 nage prescribed by the Secretary under section  
22 14104 of this title) as measured under section  
23 14502 of this title.

24 “(3) SERIOUS BODILY INJURY.—The term ‘seri-  
25 ous bodily injury’ has the meaning given that term  
26 in section 1365 of title 18, United States Code.

1           “(4) UNITED STATES.—The term ‘United  
2 States’ has the meaning given that term is section  
3 114.

4           “(5) VESSEL OF THE UNITED STATES.—The  
5 term ‘vessel of the United States’ has the meaning  
6 given that term in section 70502.

7           “(6) VESSEL SUBJECT TO THE JURISDICTION  
8 OF THE UNITED STATES.—The term ‘vessel subject  
9 to the jurisdiction of the United States’ has the  
10 meaning given that term in section 70502.”.

11       (b) CLERICAL AMENDMENT.—The analysis for such  
12 subtitle is amended by inserting after the item relating  
13 to chapter 705 the following:

**“707. Maritime Law Enforcement .....70701.”.**

