

President Obama Signs Cruise Vessel Security and Safety Act of 2010 Into Law

On July 27, 2010 President Obama signed into law the Cruise Vessel Security and Safety Act of 2010. The new law aims to improve the safety and security of American citizens sailing as passengers to and from the United States on large cruise vessels. The law requires large cruise vessels carrying American citizens to adopt basic reporting, safety, and security measures akin to those American tourists have come to expect in the hotel industry in the United States.

Background

At the urging of the International Cruise Victims Association, Inc. (ICV), congressional hearings first considered this subject in 2005 and 2006. Then, in January 2007 the *Los Angeles Times* published an important article reporting that there were 250 sexual assault incidents on Royal Caribbean Cruises alone within a 32 month period. Congressional hearings followed and much of the testimony focused on these sexual assaults by crew members on passengers. FBI testimony indicated that in almost 40 percent of the sexual assaults reported to the FBI the suspects were employees of the cruise line. Representatives of the cruise line industry highlighted the steps the industry had taken to address the problems and sought to reassure Congress that cruise vessels were safe and that legislation was neither necessary nor proper since cruise vessels were outside the jurisdiction of the United States.

The original ideas upon which the new law is based were first proposed to Congress more than three years ago and, in large measure, Congress remained true to the original proposal advanced by the ICV and other advocates for victims. Despite opposition from the cruise line industry, modest cruise vessel crime legislation focusing on reporting was passed by the U.S. House of Representatives for the first time in April 2008.

The legislative effort received a major boost in June 2008 with the co-sponsorship of a comprehensive proposal advanced by the ICV and introduced by Senator John Kerry (D-MA) and Representative Doris Matsui (D-CA). The House passed an amended version of cruise vessel crime legislation again in the Coast Guard Authorization legislation in October 2009 and the ICV's stand-alone version of the legislation passed the House by an overwhelmingly bipartisan vote in November 2009. But, the legislation languished in the U.S. Senate even though it was reported out of the Senate Commerce Committee unanimously in September 2009. Successive holds were placed on the legislation by senators and new questions posed about its potential cost and the potential burden on the U.S. Coast Guard to implement it. The process of dealing with these belated objections in the Senate took almost a year to resolve.

In the end, the cruise industry's leading trade organization, Cruise Lines International Association (CLIA), praised the new law for bringing "greater consistency and clarity of security laws and regulations" to the industry.

Highlights of the New Law

The new law makes many important legislative findings, including in summary that annually more than 12,000,000 passengers vacation on cruise vessels, that they "have an inadequate appreciation for their potential vulnerability to crime while on ocean voyages," that the serious crimes on cruise vessels

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include sexual assaults and physical assaults, that because of a lack of reporting requirements “obtaining reliable crime-related cruise data from governmental sources can be difficult,” and that upgrading and modernizing the safety and security infrastructure on cruise vessels would enhance passenger safety.

In response to testimony to Congress that one crime involved a cabin steward who let himself into a young woman’s stateroom in the middle of the night to rape her, the new law requires cruise vessels to develop policies to restrict crewmember access to passenger cabins.

The new law also mandates that cruise vessels adopt several other basic security measures familiar to American resort tourists, including security peepholes to be fitted on passenger cabin doors, security cameras, and equipping new cruise vessels with time sensitive locks and latches.

The new law also requires cruise ships to improve safety with 42 inch high guard rails and to distribute a safety guide to each passenger with information about how to contact the proper authorities, and American consulates, everywhere the ship sails.

Because many crimes go unreported to law enforcement authorities and cruise ship customers, the new law requires cruise ships to report to the FBI and keep a record of all serious crimes and thefts of over \$1,000 and then to make this record available to the FBI, the Coast Guard, and other law enforcement officials. Serious crimes and thefts of over \$10,000 must be reported immediately to the FBI if they involve an American national. These reporting requirements aim to facilitate investigation of these crimes and expose these crimes to the light of day. The new law mandates the FBI to prepare a statistical summary of the crime data, broken down by cruise line, and post it on the Internet. Additionally, each cruise line must include a link to this crime reporting Web site on its own Web site.

In response to testimony criticizing the treatment of sexual assault victims by cruise lines, the new law requires the on-board medical personnel on cruise vessels to meet enhanced qualifications and standards, undergo sexual assault response training, and carry the proper anti-retroviral medications. The medical staff must also be able to conduct a forensic medical examination of sexual assault victims and prepare documentation for the victim and the authorities. They also have an obligation to immediately provide victims with private telephone and Internet access to law enforcement authorities, counsel, and third-party services, e.g. the National Sexual Assault Hotline program.

The new law also includes medical confidentiality provisions forbidding the master of the vessel from passing on confidential medial records from sexual assault victims to company officials—

particularly the corporate legal department—without the consent of the patient. These confidentiality rules make it more difficult for cruise lines to use the trauma counseling records to improve the company’s position in court.

The new law provides for civil and criminal penalties to be assessed against cruise vessels that violate its provisions, including denial of entry into American waters.

What’s Next?

The version of this new law first co-sponsored by Senator Kerry and Representative Matsui also included reform of the Death on the High Seas Act (DOSHA) which limits damage recovery to only pecuniary damages in the event of a wrongful death on the high seas. This limitation bars recovery for non-pecuniary damages routinely available under other wrongful death laws, including loss of society, consortium, or punitive damages. However, proponents of the new law agreed to forego the DOSHA reform provision to secure Senate passage of the new law.

The recent Deepwater Horizon casualty in the Gulf of Mexico has reopened congressional consideration of DOSHA reform. On June 9, 2010, survivors of the 11 rig workers lost in the casualty called for DOSHA reform in Washington, D.C. And on July 1, 2010, the House of Representatives passed the measure which has been referred to the Senate Commerce Committee for consideration. Since House passage, the U.S. Chamber of Commerce and leading maritime industry trade groups, including CLIA, have objected to the proposed DOSHA reform. Instead, the maritime trade groups have indicated that they would not oppose reform limited only to hazardous deepwater drilling operations. Congressional consideration of the proposed changes to DOSHA will likely unfold in the coming weeks before the November election recess.

Additionally, proponents of the new law have indicated that it should provide a model for legislation in other countries to ensure that the protections afforded by the new law to American citizens on voyages from or to the United States are extended to American citizens on cruise vessels worldwide. Just as unilateral legislation in the United States has repeatedly led the world to reform maritime safety in the past, this new cruise vessel safety and security law may spark further reform abroad, especially since CLIA has publicly endorsed it.

If you have any questions regarding this briefing, please contact the following Winston & Strawn partner.

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