

One Hundred Twelfth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and twelve*

An Act

To reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

*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 “Border Tunnel Prevention Act of 2012”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Trafficking and smuggling organizations are intensifying their efforts to enter the United States through tunnels and other subterranean passages between Mexico and the United States.

(2) Border tunnels are most often used to transport narcotics from Mexico to the United States, but can also be used to transport people and other contraband.

(3) From Fiscal Year 1990 to Fiscal Year 2011, law enforcement authorities discovered 149 cross-border tunnels along the border between Mexico and the United States, 139 of which have been discovered since Fiscal Year 2001. There has been a dramatic increase in the number of cross-border tunnels discovered in Arizona and California since Fiscal Year 2006, with 40 tunnels discovered in California and 74 tunnels discovered in Arizona.

(4) Section 551 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295) added a new section to title 18, United States Code (18 U.S.C. 555), which—

(A) criminalizes the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States; and

(B) prohibits any person from recklessly permitting others to construct or use an unauthorized tunnel or subterranean passage on the person’s land.

(5) Any person convicted of using a tunnel or subterranean passage to smuggle aliens, weapons, drugs, terrorists, or illegal goods is subject to an enhanced sentence for the underlying offense. Additional sentence enhancements would further deter tunnel activities and increase prosecutorial options.

SEC. 3. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR FINANCE A BORDER TUNNEL.

Section 555 of title 18, United States Code, is amended by adding at the end the following:

“(d) Any person who attempts or conspires to commit any offense under subsection (a) or subsection (c) of this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”.

SEC. 4. AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.

Section 2516(1)(c) of title 18, United States Code, is amended by inserting “, section 555 (relating to construction or use of international border tunnels)” before the semicolon at the end.

SEC. 5. FORFEITURE.

Section 982(a)(2)(B) of title 18, United States Code, is amended by inserting “555,” after “545,”.

SEC. 6. MONEY LAUNDERING DESIGNATION.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “section 555 (relating to border tunnels),” after “section 554 (relating to smuggling goods from the United States),”.

SEC. 7. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) success in combating the construction and use of cross-border tunnels requires cooperation between Federal, State, local, and tribal officials and assistance from private land owners and tenants across the border between Mexico and the United States;

(2) the Department of Homeland Security is currently engaging in outreach efforts in California to certain landowners and tenants along the border to educate them about cross-border tunnels and seek their assistance in combating their construction; and

(3) the Department should continue its outreach efforts to both private and governmental landowners and tenants in areas along the border between Mexico and the United States with a high rate of cross-border tunnels.

SEC. 8. REPORT.

(a) **IN GENERAL.**—The Secretary of Homeland Security shall submit an annual report to the congressional committees set forth in subsection (b) that includes a description of—

(1) the cross-border tunnels along the border between Mexico and the United States discovered during the preceding fiscal year; and

(2) the needs of the Department of Homeland Security to effectively prevent, investigate and prosecute border tunnel construction along the border between Mexico and the United States.

(b) **CONGRESSIONAL COMMITTEES.**—The congressional committees set forth in this subsection are—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

(2) the Committee on the Judiciary of the Senate;

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- (3) the Committee on Appropriations of the Senate;
- (4) the Committee on Homeland Security of the House of Representatives;
- (5) the Committee on the Judiciary of the House of Representatives; and
- (6) the Committee on Appropriations of the House of Representatives.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*