109TH CONGRESS 2D SESSION

### H.R.4830

#### AN ACT

- To amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or reckless permitting (on one's land) the construction or use of a tunnel or subterranean passageway between the United States and another country.
  - 1 Be it enacted by the Senate and House of Representa-
  - ${\it 2\ tives\ of\ the\ United\ States\ of\ America\ in\ Congress\ assembled},$

#### 1 SECTION 1. SHORT TITLE.

- 2 This Act may be cited as the "Border Tunnel Preven-
- 3 tion Act of 2006".
- 4 SEC. 2. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.
- 5 (a) In General.—Chapter 27 of title 18, United
- 6 States Code, is amended by adding at the end the fol-
- 7 lowing:

#### 8 "§ 554. Border tunnels and passages

- 9 "(a) Any person who knowingly constructs or fi-
- 10 nances the construction of a tunnel or subterranean pas-
- 11 sage that crosses the international border between the
- 12 United States and another country, other than a lawfully
- 13 authorized tunnel or passage known to the Secretary of
- 14 Homeland Security and subject to inspection by the Bu-
- 15 reau of Immigration and Customs Enforcement, shall be
- 16 imprisoned for not more than 20 years.
- 17 "(b) Any person who recklessly permits the construc-
- 18 tion or use of a tunnel or passage described in subsection
- 19 (a) on land that the person owns or controls shall be im-
- 20 prisoned for not more than 10 years.
- 21 "(c) Any person who uses a tunnel or passage de-
- 22 scribed in subsection (a) to unlawfully smuggle an alien,
- 23 goods (in violation of section 545), controlled substances,
- 24 weapons of mass destruction (including biological weap-
- 25 ons), or a member of a terrorist organization (as defined
- 26 in section 212(a)(3)(B)(vi) of the Immigration and Na-

- 1 tionality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be sub-
- 2 ject to twice the penalty that would have otherwise been
- 3 imposed had the unlawful activity not made use of such
- 4 a tunnel or passage.".
- 5 (b) CLERICAL AMENDMENT.—The table of sections
- 6 for chapter 27 of title 18, United States Code, is amended
- 7 by adding at the end the following:

"Sec. 554. Border tunnels and passages.".

- 8 (c) Criminal Forfeiture.—Section 982(a)(6) of
- 9 title 18, United States Code, is amended by inserting
- 10 "554," before "1425,".
- 11 SEC. 3. DIRECTIVE TO THE UNITED STATES SENTENCING
- 12 COMMISSION.
- 13 (a) In General.—Pursuant to its authority under
- 14 section 994 of title 28, United States Code, and in accord-
- 15 ance with this section, the United States Sentencing Com-
- 16 mission shall promulgate or amend sentencing guidelines
- 17 to provide for increased penalties for persons convicted of
- 18 offenses described in section 554 of title 18, United States
- 19 Code, as added by section 1.
- 20 (b) REQUIREMENTS.—In carrying out this section,
- 21 the United States Sentencing Commission shall—
- (1) ensure that the sentencing guidelines, policy
- 23 statements, and official commentary reflect the seri-
- ous nature of the offenses described in section 554
- of title 18, United States Code, and the need for ag-

1	gressive and appropriate law enforcement action to
2	prevent such offenses;
3	(2) provide adequate base offense levels for of-
4	fenses under such section;
5	(3) account for any aggravating or mitigating
6	circumstances that might justify exceptions, includ-
7	ing—
8	(A) the use of a tunnel or passage de-
9	scribed in subsection (a) of such section to fa-
10	cilitate other felonies; and
11	(B) the circumstances for which the sen-
12	tencing guidelines currently provide applicable
13	sentencing enhancements;
14	(4) ensure reasonable consistency with other
15	relevant directives, other sentencing guidelines, and
16	statutes;
17	(5) make any necessary and conforming
18	changes to the sentencing guidelines and policy
19	statements; and

1 (6) ensure that the sentencing guidelines ade-2 quately meet the purposes of sentencing set forth in 3 section 3553(a)(2) of title 18, United States Code. Passed the House of Representatives September 21, 2006.

Attest:

Clerk.

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