

109TH CONGRESS  
2D SESSION

# S. 2355

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 2, 2006

Mrs. FEINSTEIN (for herself, Mr. KYL, Ms. CANTWELL, Mr. FRIST, Mrs. BOXER, Mrs. HUTCHISON, Mr. MCCAIN, Mr. DOMENICI, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Border Tunnel Preven-  
5       tion Act”.

1 **SEC. 2. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.**

2 (a) IN GENERAL.—Chapter 27 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 554. Border tunnels and passages**

6 “(a) Any person who knowingly constructs or fi-  
7 nances the construction of a tunnel or subterranean pas-  
8 sage that crosses the international border between the  
9 United States and another country, other than a lawfully  
10 authorized tunnel or passage known to the Secretary of  
11 Homeland Security and subject to inspection by the Bu-  
12 reau of Immigration and Customs Enforcement, shall be  
13 imprisoned for not more than 20 years.

14 “(b) Any person who recklessly permits the construc-  
15 tion or use of a tunnel or passage described in subsection  
16 (a) on land that the person owns or controls shall be im-  
17 prisoned for not more than 10 years.

18 “(c) Any person who uses a tunnel or passage de-  
19 scribed in subsection (a) to unlawfully smuggle an alien,  
20 goods (in violation of section 545), controlled substances,  
21 weapons of mass destruction (including biological weap-  
22 ons), or a member of a terrorist organization (as defined  
23 in section 212(a)(3)(B)(vi) of the Immigration and Na-  
24 tionality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be sub-  
25 ject to twice the penalty that would have otherwise been

1 imposed had the unlawful activity not made use of such  
2 a tunnel or passage.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for chapter 27 of title 18, United States Code, is amended  
5 by adding at the end the following:

“Sec. 554. Border tunnels and passages.”.

6 (c) CRIMINAL FORFEITURE.—Section 982(a)(6) of  
7 title 18, United States Code, is amended by inserting  
8 “554,” before “1425,”.

9 **SEC. 3. DIRECTIVE TO THE UNITED STATES SENTENCING**  
10 **COMMISSION.**

11 (a) IN GENERAL.—Pursuant to its authority under  
12 section 994 of title 28, United States Code, and in accord-  
13 ance with this section, the United States Sentencing Com-  
14 mission shall promulgate or amend sentencing guidelines  
15 to provide for increased penalties for persons convicted of  
16 offenses described in section 554 of title 18, United States  
17 Code, as added by section 1.

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

20 (1) ensure that the sentencing guidelines, policy  
21 statements, and official commentary reflect the seri-  
22 ous nature of the offenses described in section 554  
23 of title 18, United States Code, and the need for ag-  
24 gressive and appropriate law enforcement action to  
25 prevent such offenses;

1           (2) provide adequate base offense levels for of-  
2       fenses under such section;

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

6                 (A) the use of a tunnel or passage de-  
7       scribed in subsection (a) of such section to fa-  
8       cilitate other felonies; and

9                 (B) the circumstances for which the sen-  
10      tencing guidelines currently provide applicable  
11      sentencing enhancements;

12           (4) ensure reasonable consistency with other  
13      relevant directives, other sentencing guidelines, and  
14      statutes;

15           (5) make any necessary and conforming  
16      changes to the sentencing guidelines and policy  
17      statements; and

18           (6) ensure that the sentencing guidelines ade-  
19      quately meet the purposes of sentencing set forth in  
20      section 3553(a)(2) of title 18, United States Code.

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