

109TH CONGRESS
2D SESSION

S. 2365

To improve sharing of immigration information among Federal, State, and local law enforcement officials, to improve State and local enforcement of immigration laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2006

Mr. BURR introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve sharing of immigration information among Federal, State, and local law enforcement officials, to improve State and local enforcement of immigration laws, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Scott Gardner Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Improved Federal sharing of immigration information.

Sec. 4. State and local reporting of immigration information.

Sec. 5. DWI and immigration information in the National Criminal Information Center.

Sec. 6. State and local enforcement of Federal immigration laws.

Sec. 7. Detention and deportation of aliens for driving while intoxicated.

Sec. 8. Federal detention facilities.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) DWI.—The term “DWI” means driving
4 while intoxicated and similar motor vehicle viola-
5 tions.

6 (2) FEDERAL IMMIGRATION DATABASE.—The
7 term “Federal immigration database” means—

8 (A) the database of the LESC insofar as
9 it relates to immigration information;

10 (B) the database of the NCIC insofar as it
11 relates to immigration information; and

12 (C) any other database containing immi-
13 gration information identified by the Secretary
14 of Homeland Security.

15 (3) IMMIGRATION INFORMATION.—The term
16 “immigration information” means information speci-
17 fied by the Secretary, in consultation with the Attor-
18 ney General, relating to immigration, including ille-
19 gal immigration.

20 (4) LESC.—The term “LESC” means the Law
21 Enforcement Support Center.

1 (5) NCIC.—The term “NCIC” means the Na-
2 tional Crime Information Center of the Federal Bu-
3 reau of Investigation.

4 (6) SECRETARY.—The term “Secretary” means
5 the Secretary of Homeland Security.

6 **SEC. 3. IMPROVED FEDERAL SHARING OF IMMIGRATION**
7 **INFORMATION.**

8 (a) IN GENERAL.—The Secretary shall share immi-
9 gration information with the Attorney General.

10 (b) IMPROVED OPERATION OF FEDERAL IMMIGRA-
11 TION DATABASES.—

12 (1) REPORT.—Not later than 90 days after the
13 date of enactment of this Act, the Secretary and the
14 Attorney General shall jointly submit to Congress a
15 report on methods for improving performance of
16 Federal immigration databases to ensure the prompt
17 entry of immigration information into such data-
18 bases.

19 (2) COMPATIBILITY.—The report submitted
20 under paragraph (1) shall contain proposals to im-
21 prove the compatibility among Federal immigration
22 databases in order to—

23 (A) improve data entry, including elimi-
24 nating data entry backlogs;

1 (B) improve the means by which immigra-
 2 tion information is exchanged; and

3 (C) increase accessibility of information to
 4 Federal, State, and local law enforcement agen-
 5 cies.

6 (3) PROGRESS.—The report submitted under
 7 paragraph (1) shall describe—

8 (A) the progress made in eliminating data
 9 entry backlogs in such databases; and

10 (B) any additional resources required to
 11 eliminate such backlogs.

12 **SEC. 4. STATE AND LOCAL REPORTING OF IMMIGRATION**
 13 **INFORMATION.**

14 (a) REQUIREMENT.—

15 (1) IN GENERAL.—Subject to subsection (c),
 16 the director of each State and local law enforcement
 17 agency receiving Federal financial assistance under
 18 section 241(i) of the Immigration and Nationality
 19 Act (8 U.S.C. 1231(i)) shall, as a condition of such
 20 assistance, submit a report to the Secretary, in such
 21 form, in such manner, and containing such immigra-
 22 tion and DWI information collected in the course of
 23 the director's normal duties as the Secretary re-
 24 quires for entry into Federal immigration databases.

1 (2) REPORT ON RESOURCES.—Not later than
2 90 days after the date of enactment of this Act, the
3 Secretary and the Attorney General shall jointly sub-
4 mit to Congress a report on additional resources re-
5 quired by State and local law enforcement agencies
6 to comply with the requirement of paragraph (1).

7 (b) PROMOTION OF LAW ENFORCEMENT SUPPORT
8 CENTER.—The Secretary shall promote the use of the
9 LESC to State and local law enforcement agencies.

10 (c) EXEMPTION FROM STATE AND LOCAL REPORT-
11 ING REQUIREMENT.—State and local law enforcement
12 agencies are not required to collect or report immigration
13 information relating to any individual who assists law en-
14 forcement agencies in the performance of the duties of
15 such agencies, including assistance as an informant, a wit-
16 ness, or in a similar capacity.

17 **SEC. 5. DWI AND IMMIGRATION INFORMATION IN THE NA-**
18 **TIONAL CRIMINAL INFORMATION CENTER.**

19 (a) INCLUSION.—DWI and immigration information
20 in the NCIC—

21 (1) shall appear as a flag in the Wanted Person
22 File of the NCIC database; and

23 (2) shall be timely and readily available to State
24 and local law enforcement officers while they are in
25 the course of their normal duties.

1 (b) MANDATORY DETENTION.—A State or local law
 2 enforcement officer who finds a flag for a DWI and immi-
 3 gration violation of an alien in the Wanted Person File
 4 of the NCIC and who arrests the alien shall detain the
 5 alien in a State or local jail until the alien can be trans-
 6 ferred to Federal custody.

7 **SEC. 6. STATE AND LOCAL ENFORCEMENT OF FEDERAL IM-**
 8 **MIGRATION LAWS.**

9 (a) IN GENERAL.—Section 287(g) of the Immigra-
 10 tion and Nationality Act (8 U.S.C. 1357(g)) is amended—

11 (1) in paragraph (1), by striking “may enter”
 12 and inserting “shall enter”;

13 (2) in paragraph (2), by adding at the end the
 14 following: “If such training is provided by a State or
 15 political subdivision of a State to an officer or em-
 16 ployee of such State or political subdivision of a
 17 State, the cost of such training (including applicable
 18 overtime costs) shall be reimbursed by the Secretary
 19 of Homeland Security.”;

20 (3) by striking paragraph (9); and

21 (4) by redesignating paragraph (10) as para-
 22 graph (9).

23 (b) RULEMAKING.—Not later than 1 year after the
 24 date of enactment of this Act, the Secretary shall issue

1 regulations to carry out the amendments made by sub-
 2 section (a).

3 (c) EFFECTIVE DATES.—

4 (1) REQUIREMENT FOR AGREEMENT.—Except
 5 as provided in paragraph (2), the amendments made
 6 by subsection (a) shall take effect on the earlier of—

7 (A) the date on which regulations are
 8 issued under paragraph (1); and

9 (B) the date that is 1 year after the date
 10 of enactment of this Act.

11 (2) PAYMENT FOR TRAINING COSTS.—The
 12 amendment made by subsection (a)(2) shall take ef-
 13 fect on the first day of the first fiscal year beginning
 14 after the date of enactment of this Act.

15 **SEC. 7. DETENTION AND DEPORTATION OF ALIENS FOR**
 16 **DRIVING WHILE INTOXICATED.**

17 (a) IN GENERAL.—Section 236 of the Immigration
 18 and Nationality Act (8 U.S.C. 1226) is amended—

19 (1) in subsection (c)(1)—

20 (A) in subparagraph (C), by striking “or”
 21 at the end;

22 (B) in subparagraph (D), by inserting
 23 “or” after “section 237(a)(4)(B),”; and

24 (C) by inserting after subparagraph (D)
 25 the following:

1 “(E) is deportable on any grounds and is
 2 apprehended for driving while intoxicated, driv-
 3 ing under the influence, or similar violation of
 4 State law (as determined by the Secretary of
 5 Homeland Security) by a State or local law en-
 6 forcement officer covered under an agreement
 7 under section 287(g),”;

8 (2) by redesignating subsection (e) as sub-
 9 section (f); and

10 (3) by inserting after subsection (d) the fol-
 11 lowing:

12 “(e) DRIVING WHILE INTOXICATED.—If a State or
 13 local law enforcement officer apprehends an individual for
 14 an offense described in subsection (c)(1)(E) and the offi-
 15 cer has reasonable grounds to believe that the individual
 16 is an alien—

17 “(1) the officer shall determine, using the data-
 18 bases of the Federal Government, including the Na-
 19 tional Criminal Information Center and the Law En-
 20 forcement Support Center, if the individual is—

21 “(A) an alien; and

22 “(B) unlawfully present in the United
 23 States; and

24 “(2) if any such database—

1 “(A) indicates that the individual is an
2 alien unlawfully present in the United States—

3 “(i) an officer covered under an agree-
4 ment under section 287(g) may issue a
5 Federal detainer to maintain the alien in
6 custody in accordance with such agreement
7 until the alien is convicted for such offense
8 or the alien is transferred to Federal cus-
9 tody;

10 “(ii) the officer may transport the
11 alien to a location where the alien can be
12 transferred to Federal custody and re-
13 moved from the United States in accord-
14 ance with applicable law; and

15 “(iii) the Secretary of Homeland Se-
16 curity shall reimburse the State and local
17 law enforcement agencies involved for the
18 costs of transporting aliens when such
19 transportation is not done in the course of
20 their normal duties; or

21 “(B) indicates that the individual is an
22 alien that is not unlawfully present in the
23 United States, the officer shall—

24 “(i) take the alien into custody for
25 such offense in accordance with State law;

1 “(ii) promptly notify the Secretary of
2 Homeland Security of such apprehension;
3 and
4 “(iii) maintain the alien in custody
5 pending a determination by the Secretary
6 with respect to any action to be taken by
7 the Secretary against such alien.”.

8 (b) DEPORTATION FOR DRIVING WHILE INTOXI-
9 CATED.—

10 (1) IN GENERAL.—Section 237(a)(2) of the Im-
11 migration and Nationality Act (8 U.S.C. 1227(a)(2))
12 is amended by adding at the end the following:

13 “(F) DRIVING WHILE INTOXICATED.—Any
14 alien who is convicted of driving while intoxi-
15 cated, driving under the influence, or a similar
16 violation of State law (as determined by the
17 Secretary of Homeland Security), or who re-
18 fuses, in violation of State law, to submit to a
19 Breathalyzer test or other test for the purpose
20 of determining blood alcohol content is deport-
21 able and shall be deported.”.

22 (2) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall apply to violations or refusals
24 occurring after the date of enactment of this Act.

1 (c) SHARING OF INFORMATION BY MOTOR VEHICLE
2 ADMINISTRATORS REGARDING DWI CONVICTIONS AND
3 REFUSALS.—Each State motor vehicle administrator
4 shall—

5 (1) share information with the Secretary relat-
6 ing to any alien who has a conviction or refusal de-
7 scribed in section 237(a)(2)(F) of the Immigration
8 and Nationality Act (8 U.S.C. 1227(a)(2)(F));

9 (2) share such information with other State
10 motor vehicle administrators through the Drivers Li-
11 cense Agreement of the American Association of
12 Motor Vehicle Administrators; and

13 (3) provide such information to the NCIC at
14 such time and in such form as the Secretary may re-
15 quire.

16 **SEC. 8. FEDERAL DETENTION FACILITIES.**

17 (a) REPORT ON CURRENT ALLOCATION FORMULA;
18 RECOMMENDATIONS FOR STOP-GAP MEASURES.—Not
19 later than 90 days after the date of enactment of this Act,
20 the Secretary shall submit a report to Congress that de-
21 scribes the formula for allocation of Federal detention fa-
22 cilities for aliens under section 241(g) of the Immigration
23 and Nationality Act (8 U.S.C. 1231(g)). The report shall
24 include proposals for the temporary expansion of State
25 and local jails to detain increased numbers of illegal aliens

1 pending construction or expansion of Federal detention fa-
2 cilities.

3 (b) NEW CONSTRUCTION IN HIGH CONCENTRATION
4 AREAS.—In accordance with such section 241(g), the Sec-
5 retary shall ensure that, to the greatest extent practicable,
6 construction of new detention facilities is undertaken in
7 or near areas in which the Secretary has determined that
8 there is a high concentration of illegal aliens.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to carry out this section.

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