

111TH CONGRESS  
1ST SESSION

# H. R. 373

To amend the Immigration and Nationality Act to render inadmissible and deportable certain aliens convicted of drunk driving, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2009

Mr. FLAKE introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend the Immigration and Nationality Act to render inadmissible and deportable certain aliens convicted of drunk driving, 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. INCREASED CRIMINAL PENALTIES RELATED**  
4       **TO DRUNK DRIVING.**

5       (a) INADMISSIBILITY.—Section 212(a)(2) of the Im-  
6       migration and Nationality Act (8 U.S.C. 1182(a)(2)) is  
7       amended—

8               (1) by redesignating subparagraph (F) as sub-  
9       paragraph (J); and

1           (2) by inserting after subparagraph (E) the fol-  
2       lowing:

3           “(F) DRUNK DRIVERS.—Any alien who  
4       has been convicted of 3 offenses for driving  
5       under the influence and at least 1 of the of-  
6       fenses is a felony under Federal or State law,  
7       for which the alien was sentenced to more than  
8       1 year imprisonment, is inadmissible.”.

9       (b) DEPORTABILITY.—Section 237(a)(2) of such Act  
10   (8 U.S.C. 1227(a)(2)) is amended by adding at the end  
11   the following:

12           “(F) DRUNK DRIVERS.—Unless the Sec-  
13       retary of Homeland Security or the Attorney  
14       General waives the application of this subpara-  
15       graph, any alien who has been convicted of 3  
16       offenses for driving under the influence and at  
17       least 1 of the offenses is a felony under Federal  
18       or State law, for which the alien was sentenced  
19       to more than 1 year imprisonment, is deport-  
20       able.”.

21       (c) JUDICIAL ADVISAL.—

22           (1) IN GENERAL.—A court shall not accept a  
23       guilty plea for driving under the influence unless the  
24       court has administered to the defendant, on the  
25       record, the following adivsal:

1 “If you are not a citizen of the United States, you  
2 are advised that conviction for driving under the in-  
3 fluence, including conviction by entry of any plea,  
4 even if the conviction is later expunged, may result  
5 in deportation, exclusion from admission to the  
6 United States, or denial of naturalization pursuant  
7 to the laws of the United States.”.

8 (2) FAILURE TO ADVISE.—Upon request, the  
9 court shall allow the defendant a reasonable amount  
10 of additional time to consider the appropriateness of  
11 the plea in light of the advisement set out in para-  
12 graph (1). If the court fails to advise the defendant  
13 in accordance with paragraph (1) and the defendant  
14 shows that conviction of the offense to which the de-  
15 fendant pleaded guilty may result in the defendant’s  
16 deportation, exclusion from the United States, or de-  
17 nial of naturalization pursuant to the laws of the  
18 United States, the court, upon a motion by the de-  
19 fendant, shall vacate the judgment and permit the  
20 defendant to withdraw the plea and enter a plea of  
21 not guilty. If the record does not show that the court  
22 provided the required advisement, it shall be pre-  
23 sumed that the defendant did not receive the advise-  
24 ment. The defendant shall not be required to dis-  
25 close his or her immigration status at any time.

1 (d) CONFORMING AMENDMENT.—Section 212(h) of  
2 such Act (8 U.S.C. 1182(h)) is amended—

3 (1) in the subsection heading, by striking “SUB-  
4 SECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E)”  
5 and inserting “CERTAIN PROVISIONS IN SUB-  
6 SECTION (a)(2)”; and

7 (2) in the matter preceding paragraph (1), by  
8 striking “and (E)” and inserting “(E), and (F)”.

9 (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect on the date of the enactment  
11 of this Act and shall apply to convictions entered on or  
12 after such date.

○