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1ST SESSION

H. R. 3898

IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2017

Received; read twice and referred to the Committee on Foreign Relations

AN ACT

To impose secondary sanctions with respect to North Korea, strengthen international efforts to improve sanctions enforcement, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Otto Warmbier North
3 Korea Nuclear Sanctions Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) On June 1, 2016, the Department of the
7 Treasury’s Financial Crimes Enforcement Network
8 announced a Notice of Finding that the Democratic
9 People’s Republic of Korea is a jurisdiction of pri-
10 mary money laundering concern due to its use of
11 state-controlled financial institutions and front com-
12 panies to support the proliferation and development
13 of weapons of mass destruction (WMD) and ballistic
14 missiles.

15 (2) The Financial Action Task Force (FATF)
16 has expressed serious concerns with the threat posed
17 by North Korea’s proliferation and financing of
18 WMD, and has called on FATF members to apply
19 effective counter-measures to protect their financial
20 sectors from North Korean money laundering, WMD
21 proliferation financing, and the financing of ter-
22 rorism.

23 (3) In its February 2017 report, the U.N.
24 Panel of Experts concluded that—

25 (A) North Korea continued to access the
26 international financial system in support of il-

1 licit activities despite sanctions imposed by
2 U.N. Security Council Resolutions 2270 (2016)
3 and 2321 (2016);

4 (B) during the reporting period, no mem-
5 ber state had reported taking actions to freeze
6 North Korean assets; and

7 (C) sanctions evasion by North Korea,
8 combined with inadequate compliance by mem-
9 ber states, had significantly negated the impact
10 of U.N. Security Council resolutions.

11 (4) In its September 2017 report, the U.N.
12 Panel of Experts found that—

13 (A) North Korea continued to violate fi-
14 nancial sanctions by using agents acting abroad
15 on the country's behalf;

16 (B) foreign financial institutions provided
17 correspondent banking services to North Ko-
18 rean persons and front companies for illicit pur-
19 poses;

20 (C) foreign companies violated sanctions by
21 maintaining links with North Korean financial
22 institutions; and

23 (D) North Korea generated at least \$270
24 million during the reporting period through the
25 violation of sectoral sanctions.

1 (5) North Korean entities engage in significant
2 financial transactions through foreign bank accounts
3 that are maintained by non-North Korean nationals,
4 thereby masking account users' identity in order to
5 access financial services.

6 (6) North Korea's sixth nuclear test on Sep-
7 tember 3, 2017, demonstrated an estimated explo-
8 sive power more than 100 times greater than that
9 generated by its first nuclear test in 2006.

10 (7) North Korea has successfully tested sub-
11 marine-launched and intercontinental ballistic mis-
12 siles, and is rapidly progressing in its development
13 of a nuclear-armed missile that is capable of reach-
14 ing United States territory.

15 **SEC. 3. CONDITIONS WITH RESPECT TO CERTAIN AC-**
16 **COUNTS AND TRANSACTIONS AT UNITED**
17 **STATES FINANCIAL INSTITUTIONS.**

18 (a) CORRESPONDENT AND PAYABLE-THROUGH AC-
19 COUNTS HELD BY FOREIGN FINANCIAL INSTITUTIONS.—

20 (1) IN GENERAL.—Not later than 45 days after
21 the date of the enactment of this Act, the Secretary
22 of the Treasury shall prescribe regulations to pro-
23 hibit, or impose strict conditions on, the opening or
24 maintaining in the United States of a correspondent
25 account or a payable-through account by a foreign

1 financial institution that the Secretary finds know-
2 ingly facilitates a significant transaction or trans-
3 actions or provides significant financial services for
4 a covered person.

5 (2) PENALTIES.—

6 (A) CIVIL PENALTY.—A person who vio-
7 lates, attempts to violate, conspires to violate,
8 or causes a violation of regulations prescribed
9 under this subsection shall be subject to a civil
10 penalty in an amount not to exceed the greater
11 of—

12 (i) \$250,000; or

13 (ii) an amount that is twice the
14 amount of the transaction that is the basis
15 of the violation with respect to which the
16 penalty is imposed.

17 (B) CRIMINAL PENALTY.—A person who
18 willfully commits, willfully attempts to commit,
19 or willfully conspires to commit, or aids or
20 abets in the commission of, a violation of regu-
21 lations prescribed under this subsection shall,
22 upon conviction, be fined not more than
23 \$1,000,000, or if a natural person, may be im-
24 prisoned for not more than 20 years, or both.

1 (b) RESTRICTIONS ON CERTAIN TRANSACTIONS BY
2 UNITED STATES FINANCIAL INSTITUTIONS.—

3 (1) IN GENERAL.—Not later than 45 days after
4 the date of the enactment of this Act, the Secretary
5 of the Treasury shall prescribe regulations to pro-
6 hibit a United States financial institution, and any
7 person owned or controlled by a United States finan-
8 cial institution, from knowingly engaging in a sig-
9 nificant transaction or transactions with or benefit-
10 ting any person that the Secretary finds to be a cov-
11 ered person.

12 (2) CIVIL PENALTY.—A person who violates, at-
13 tempts to violate, conspires to violate, or causes a
14 violation of regulations prescribed under this sub-
15 section shall be subject to a civil penalty in an
16 amount not to exceed the greater of—

17 (A) \$250,000; or

18 (B) an amount that is twice the amount of
19 the transaction that is the basis of the violation
20 with respect to which the penalty is imposed.

1 **SEC. 4. OPPOSITION TO ASSISTANCE BY THE INTER-**
2 **NATIONAL FINANCIAL INSTITUTIONS AND**
3 **THE EXPORT-IMPORT BANK.**

4 (a) INTERNATIONAL FINANCIAL INSTITUTIONS.—
5 The Bretton Woods Agreements Act (22 U.S.C. 286 et
6 seq.) is amended by adding at the end the following:

7 **“SEC. 73. OPPOSITION TO ASSISTANCE FOR ANY GOVERN-**
8 **MENT THAT FAILS TO IMPLEMENT SANC-**
9 **TIONS ON NORTH KOREA.**

10 “(a) IN GENERAL.—The Secretary of the Treasury
11 shall instruct the United States Executive Director at the
12 international financial institutions (as defined under sec-
13 tion 1701(c) of the International Financial Institutions
14 Act) to use the voice and vote of the United States to
15 oppose the provision of financial assistance to a foreign
16 government, other than assistance to support basic human
17 needs, if the President determines that, in the year pre-
18 ceding consideration of approval of such assistance, the
19 government has knowingly failed to prevent the provision
20 of financial services to, or freeze the funds, financial as-
21 sets, and economic resources of, a person described under
22 subparagraphs (A) through (E) of section 7(2) of the Otto
23 Warmbier North Korea Nuclear Sanctions Act.

24 “(b) WAIVER.—The President may waive subsection
25 (a) for up to 180 days at a time with respect to a foreign
26 government if the President reports to Congress that—

1 “(1) the foreign government’s failure described
2 under (a) is due exclusively to a lack of foreign gov-
3 ernment capacity;

4 “(2) the foreign government is taking effective
5 steps to prevent recurrence of such failure; or

6 “(3) such waiver is vital to the national security
7 interests of the United States.”.

8 (b) EXPORT-IMPORT BANK.—Section 2(b) of the Ex-
9 port-Import Bank Act of 1945 (12 U.S.C. 635(b)) is
10 amended by adding at the end the following:

11 “(14) PROHIBITION ON SUPPORT INVOLVING
12 PERSONS CONNECTED WITH NORTH KOREA.—The
13 Bank may not guarantee, insure, or extend credit, or
14 participate in the extension of credit in connection
15 with the export of a good or service to a covered per-
16 son (as defined under section 7 of the Otto
17 Warmbier North Korea Nuclear Sanctions Act).”.

18 **SEC. 5. TREASURY REPORTS ON COMPLIANCE, PENALTIES,**

19 **AND TECHNICAL ASSISTANCE.**

20 (a) QUARTERLY REPORT.—

21 (1) IN GENERAL.—Not later than 120 days fol-
22 lowing the date of the enactment of this Act, and
23 every 90 days thereafter, the Secretary of the Treas-
24 ury shall submit a report to the Committee on Fi-
25 nancial Services of the House of Representatives and

1 the Committee on Banking, Housing, and Urban Af-
2 fairs of the Senate that includes—

3 (A) a list of financial institutions that, in
4 the period since the preceding report, knowingly
5 facilitated a significant transaction or trans-
6 actions or provided significant financial services
7 for a covered person, or failed to apply appro-
8 priate due diligence to prevent such activities;

9 (B) a list of any penalties imposed under
10 section 3 in the period since the preceding re-
11 port; and

12 (C) a description of efforts by the Depart-
13 ment of the Treasury in the period since the
14 preceding report, through consultations, tech-
15 nical assistance, or other appropriate activities,
16 to strengthen the capacity of financial institu-
17 tions and foreign governments to prevent the
18 provision of financial services benefitting any
19 covered person.

20 (2) FORM OF REPORT; PUBLIC AVAILABILITY.—

21 (A) FORM.—The report required under
22 paragraph (1) shall be submitted in unclassified
23 form but may contain a classified annex.

24 (B) PUBLIC AVAILABILITY.—The unclassi-
25 fied portion of such report shall be made avail-

1 able to the public and posted on the website of
2 the Department of the Treasury.

3 (b) TESTIMONY REQUIRED.—Upon request of the
4 Committee on Financial Services of the House of Rep-
5 resentatives or the Committee on Banking, Housing, and
6 Urban Affairs of the Senate, the Under Secretary of the
7 Treasury for Terrorism and Financial Intelligence shall
8 testify to explain the effects of this Act, and the amend-
9 ments made by this Act, on North Korea’s access to fi-
10 nance.

11 (c) INTERNATIONAL MONETARY FUND.—Title XVI
12 of the International Financial Institutions Act (22 U.S.C.
13 262p et seq.) is amended by adding at the end the fol-
14 lowing:

15 **“SEC. 1629. SUPPORT FOR CAPACITY OF THE INTER-**
16 **NATIONAL MONETARY FUND TO PREVENT**
17 **MONEY LAUNDERING AND FINANCING OF**
18 **TERRORISM.**

19 “The Secretary of the Treasury shall instruct the
20 United States Executive Director at the International
21 Monetary Fund to support the use of the administrative
22 budget of the Fund for technical assistance that strength-
23 ens the capacity of Fund members to prevent money laun-
24 dering and the financing of terrorism.”.

1 (d) NATIONAL ADVISORY COUNCIL REPORT TO CON-
2 GRESS.—The Chairman of the National Advisory Council
3 on International Monetary and Financial Policies shall in-
4 clude in the report required by section 1701 of the Inter-
5 national Financial Institutions Act (22 U.S.C. 262r) for
6 the fiscal year following the date of the enactment of this
7 Act a description of—

8 (1) the activities of the International Monetary
9 Fund in the most recently completed fiscal year to
10 provide technical assistance that strengthens the ca-
11 pacity of Fund members to prevent money laun-
12 dering and the financing of terrorism, and the effec-
13 tiveness of the assistance; and

14 (2) the efficacy of efforts by the United States
15 to support such technical assistance through the use
16 of the Fund’s administrative budget.

17 **SEC. 6. SUSPENSION AND TERMINATION OF PROHIBITIONS**
18 **AND PENALTIES.**

19 (a) SUSPENSION.—The President may suspend, on a
20 case-by-case basis, the application of any provision of this
21 Act, or provision in an amendment made by this Act, for
22 a period of not more than 180 days at a time if the Presi-
23 dent certifies to Congress that—

24 (1) the Government of North Korea has—

1 (A) committed to the verifiable suspension
2 of North Korea's proliferation and testing of
3 WMD, including systems designed in whole or
4 in part for the delivery of such weapons; and

5 (B) has agreed to multilateral talks includ-
6 ing the Government of the United States, with
7 the goal of permanently and verifiably limiting
8 North Korea's WMD and ballistic missile pro-
9 grams; or

10 (2) such suspension is vital to the national se-
11 curity interests of the United States, with an expla-
12 nation of the reasons therefor.

13 (b) TERMINATION.—

14 (1) IN GENERAL.—On the date that is 30 days
15 after the date on which the President makes the cer-
16 tification described under paragraph (2)—

17 (A) section 3, subsections (a) and (b) of
18 section 5, and section 6(a) of this Act shall
19 cease to have any force or effect;

20 (B) section 73 of the Bretton Woods
21 Agreements Act, as added by section 4(a), shall
22 be repealed; and

23 (C) section 2(b)(14) of the Export-Import
24 Bank Act of 1945, as added by section 4(b),
25 shall be repealed.

1 (2) CERTIFICATION.—The certification de-
2 scribed under this paragraph is a certification by the
3 President to the Congress that—

4 (A) the Government of North Korea—

5 (i) has ceased to pose a significant
6 threat to national security, with an expla-
7 nation of the reasons therefor; or

8 (ii) is committed to, and is taking ef-
9 fective steps to achieving, the goal of per-
10 manently and verifiably limiting North Ko-
11 rea’s WMD and ballistic missile programs;

12 or

13 (B) such termination is vital to the na-
14 tional security interests of the United States,
15 with an explanation of the reasons therefor.

16 **SEC. 7. DEFINITIONS.**

17 For purposes of this Act:

18 (1) TERMS RELATED TO NORTH KOREA.—The
19 terms “applicable Executive order”, “Government of
20 North Korea”, “North Korea”, “North Korean per-
21 son”, and “significant activities undermining cyber-
22 security” have the meanings given those terms, re-
23 spectively, in section 3 of the North Korea Sanctions
24 and Policy Enhancement Act of 2016 (22 U.S.C.
25 9202).

1 (2) COVERED PERSON.—The term “covered
2 person” means the following:

3 (A) Any designated person under an appli-
4 cable Executive order.

5 (B) Any North Korean person that facili-
6 tates the transfer of bulk cash or covered goods
7 (as defined under section 1027.100 of title 31,
8 Code of Federal Regulations).

9 (C) Any North Korean financial institu-
10 tion.

11 (D) Any North Korean person employed
12 outside of North Korea, except that the Sec-
13 retary of the Treasury may waive the applica-
14 tion of this subparagraph for a North Korean
15 person that is not otherwise a covered person
16 and—

17 (i) has been granted asylum or ref-
18 ugee status by the country of employment;
19 or

20 (ii) is employed as essential diplomatic
21 personnel for the Government of North
22 Korea.

23 (E) Any person acting on behalf of, or at
24 the direction of, a person described under sub-
25 paragraphs (A) through (D).

1 (F) Any person that knowingly employs a
2 person described under subparagraph (D).

3 (G) Any person that facilitates the import
4 of goods, services, technology, or natural re-
5 sources, including energy imports and minerals,
6 or their derivatives, from North Korea.

7 (H) Any person that facilitates the export
8 of goods, services, technology, or natural re-
9 sources, including energy exports and minerals,
10 or their derivatives, to North Korea, except for
11 food, medicine, or medical supplies required for
12 civilian humanitarian needs.

13 (I) Any person that invests in, or partici-
14 pates in a joint venture with, an entity in which
15 the Government of North Korea participates or
16 an entity that is created or organized under
17 North Korean law.

18 (J) Any person that provides financial
19 services, including through a subsidiary or joint
20 venture, in North Korea.

21 (K) Any person that insures, registers, fa-
22 cilitates the registration of, or maintains insur-
23 ance or a registration for, a vessel owned, con-
24 trolled, commanded, or operated by a North
25 Korean person.

1 (L) Any person providing specialized
2 teaching, training, or information or providing
3 material or technological support to a North
4 Korean person that—

5 (i) may contribute to North Korea’s
6 development and proliferation of WMD, in-
7 cluding systems designed in whole or in
8 part for the delivery of such weapons; or

9 (ii) may contribute to significant ac-
10 tivities undermining cybersecurity.

11 (3) FINANCIAL INSTITUTION DEFINITIONS.—

12 (A) FINANCIAL INSTITUTION.—The term
13 “financial institution” means a United States
14 financial institution or a foreign financial insti-
15 tution.

16 (B) FOREIGN FINANCIAL INSTITUTION.—
17 The term “foreign financial institution” has the
18 meaning given that term under section
19 1010.605 of title 31, Code of Federal Regula-
20 tions.

21 (C) NORTH KOREAN FINANCIAL INSTITU-
22 TION.—The term “North Korean financial in-
23 stitution” includes—

24 (i) any North Korean financial insti-
25 tution, as defined in section 3 of the North

1 Korea Sanctions and Policy Enhancement
2 Act of 2016 (22 U.S.C. 9202);

3 (ii) any financial agency, as defined in
4 section 5312 of title 31, United States
5 Code, that is owned or controlled by the
6 Government of North Korea;

7 (iii) any money transmitting business,
8 as defined in section 5330(d) of title 31,
9 United States Code, that is owned or con-
10 trolled by the Government of North Korea;

11 (iv) any financial institution that is a
12 joint venture between any person and the
13 Government of North Korea; and

14 (v) any joint venture involving a
15 North Korean financial institution.

16 (D) UNITED STATES FINANCIAL INSTITU-
17 TION.—The term “United States financial insti-
18 tution” has the meaning given the term “U.S.
19 financial institution” under section 510.310 of
20 title 31, Code of Federal Regulations.

21 (4) KNOWINGLY.—The term “knowingly” with
22 respect to conduct, a circumstance, or a result,
23 means that a person has actual knowledge, or should

1 have known, of the conduct, the circumstance, or the
2 result.

 Passed the House of Representatives October 24,
2017.

Attest:

KAREN L. HAAS,

Clerk.