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H. R. 5576

To address state-sponsored cyber activities against the United States, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2018

Mr. YOHO (for himself, Mr. ROYCE of California, Mr. ENGEL, Mr. SHERMAN, Mr. LANGEVIN, Mr. CHABOT, Mr. POE of Texas, Mr. FITZPATRICK, Mr. MEADOWS, and Mr. CASTRO of Texas) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Financial Services, Oversight and Government Reform, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To address state-sponsored cyber activities against the
United States, 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.**

4 This Act may be cited as the “Cyber Deterrence and
5 Response Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) On February 13, 2018, the Director of Na-
2 tional Intelligence stated in his testimony before the
3 Senate Select Committee on Intelligence that “Rus-
4 sia, China, Iran, and North Korea will pose the
5 greatest cyber threats to the United States during
6 the next year” through the use of cyber operations
7 as low-cost tools of statecraft, and assessed that
8 these states would “work to use cyber operations to
9 achieve strategic objectives unless they face clear re-
10 percussions for their cyber operations”.

11 (2) The 2017 Worldwide Threat Assessment of
12 the United States Intelligence Community stated
13 that “The potential for surprise in the cyber realm
14 will increase in the next year and beyond as billions
15 more digital devices are connected—with relatively
16 little built-in security—and both nation states and
17 malign actors become more emboldened and better
18 equipped in the use of increasingly widespread cyber
19 toolkits. The risk is growing that some adversaries
20 will conduct cyber attacks—such as data deletion or
21 localized and temporary disruptions of critical infra-
22 structure—against the United States in a crisis
23 short of war.”.

24 (3) On March 29, 2017, President Donald J.
25 Trump deemed it necessary to continue the national

1 emergency declared in Executive Order 13694 as
2 “Significant malicious cyber-enabled activities origi-
3 nating from, or directed by persons located, in whole
4 or in substantial part, outside the United States,
5 continue to pose an unusual and extraordinary
6 threat to the national security, foreign policy, and
7 economy of the United States.”.

8 (4) On January 5, 2017, former Director of
9 National Intelligence, James Clapper, former Under-
10 secretary of Defense for Intelligence, Marcel Lettre,
11 and the Commander of the United States Cyber
12 Command, Admiral Michael Rogers, submitted joint
13 testimony to the Committee on Armed Services of
14 the Senate that stated “As of late 2016 more than
15 30 nations are developing offensive cyber attack ca-
16 pabilities” and that “Protecting critical infrastruc-
17 ture, such as crucial energy, financial, manufac-
18 turing, transportation, communication, and health
19 systems, will become an increasingly complex na-
20 tional security challenge.”.

21 (5) There is significant evidence that hackers
22 affiliated with foreign governments have conducted
23 cyber operations targeting companies and critical in-
24 frastructure sectors in the United States as the De-
25 partment of Justice has announced that—

1 (A) on March 24, 2016, seven Iranians
2 working for Iran’s Revolutionary Guard Corps-
3 affiliated entities were indicted for conducting
4 distributed denial of service attacks against the
5 financial sector in the United States from 2012
6 to 2013; and

7 (B) on May 19, 2014, five Chinese military
8 hackers were charged for hacking United States
9 companies in the nuclear power, metals, and
10 solar products industries, and engaging in eco-
11 nomic espionage.

12 (6) In May 2017, North Korea released
13 “WannaCry” pseudo-ransomware, which posed a sig-
14 nificant risk to the economy, national security, and
15 the citizens of the United States and the world, as
16 it resulted in the infection of over 300,000 computer
17 systems in more than 150 countries, including in the
18 healthcare sector of the United Kingdom, dem-
19 onstrating the global reach and cost of cyber-enabled
20 malicious activity.

21 (7) In June 2017, Russia carried out the most
22 destructive cyber-enabled operation in history, re-
23 leasing the NotPetya malware that caused billions of
24 dollars’ worth of damage within Ukraine and across
25 Europe, Asia, and the Americas.

1 **SEC. 3. ACTIONS TO ADDRESS STATE-SPONSORED CYBER**
2 **ACTIVITIES AGAINST THE UNITED STATES.**

3 (a) DESIGNATION AS A CRITICAL CYBER THREAT.—

4 (1) IN GENERAL.—The President, acting
5 through the Secretary of State, shall designate as a
6 critical cyber threat—

7 (A) each foreign person and each agency
8 or instrumentality of a foreign state that the
9 President determines to be responsible for or
10 complicit in, or have engaged in, directly or in-
11 directly, state-sponsored cyber activities that
12 are reasonably likely to result in, or have con-
13 tributed to, a significant threat to the national
14 security, foreign policy, or economic health or
15 financial stability of the United States and that
16 have the purpose or effect of—

17 (i) causing a significant disruption to
18 the availability of a computer or network
19 of computers;

20 (ii) harming, or otherwise significantly
21 compromising the provision of service by, a
22 computer or network of computers that
23 support one or more entities in a critical
24 infrastructure sector;

1 (iii) significantly compromising the
2 provision of services by one or more enti-
3 ties in a critical infrastructure sector;

4 (iv) causing a significant misappro-
5 priation of funds or economic resources,
6 trade secrets, personal identifiers, or finan-
7 cial information for commercial or competi-
8 tive advantage or private financial gain;

9 (v) destabilizing the financial sector of
10 the United States by tampering with, alter-
11 ing, or causing a misappropriation of data;
12 or

13 (vi) interfering with or undermining
14 election processes or institutions by tam-
15 pering with, altering, or causing misappro-
16 priation of data;

17 (B) each foreign person that the President
18 has determined to have knowingly materially as-
19 sisted, sponsored, or provided financial, mate-
20 rial, or technological support for, or goods or
21 services to or in support of, any activities de-
22 scribed in subparagraph (A) by a foreign person
23 or agency or instrumentality of a foreign state
24 designated as a critical cyber threat under sub-
25 paragraph (A);

1 (C) each agency or instrumentality of a
2 foreign state that the President has determined
3 to have materially assisted, sponsored, or pro-
4 vided financial, material, or technological sup-
5 port for, or goods or services to or in support
6 of, any activities described in subparagraph (A)
7 by a foreign person or agency or instrumen-
8 tality of a foreign state designated as a critical
9 cyber threat under subparagraph (A);

10 (D) each foreign person that the President
11 has determined to have attempted to engage in
12 any of the activities described in subparagraph
13 (A) or (B); or

14 (E) each agency or instrumentality of a
15 foreign state that the President has determined
16 to have attempted to engage in any of the ac-
17 tivities described in subparagraph (A) or (C).

18 (2) PUBLICATION IN FEDERAL REGISTER.—The
19 President shall—

20 (A) publish in the Federal Register a list
21 of each foreign person and each agency or in-
22 strumentality of a foreign state designated as a
23 critical cyber threat under this subsection; and

1 (B) regularly update such list not later
2 than seven days after making any changes to
3 the list.

4 (b) NON-TRAVEL-RELATED SANCTIONS.—

5 (1) IN GENERAL.—The President shall impose
6 one or more of the applicable sanctions described in
7 paragraph (2) with respect to each foreign person
8 and each agency or instrumentality of a foreign
9 state designated as a critical cyber threat under sub-
10 section (a).

11 (2) SANCTIONS DESCRIBED.—The sanctions de-
12 scribed in this paragraph are the following:

13 (A) The President may provide for the
14 withdrawal, limitation, or suspension of non-hu-
15 manitarian United States development assist-
16 ance under chapter 1 of part I of the Foreign
17 Assistance Act of 1961.

18 (B) The President may provide for the
19 withdrawal, limitation, or suspension of United
20 States security assistance under part II of the
21 Foreign Assistance Act of 1961.

22 (C) The President may direct the United
23 States executive director to each international
24 financial institution to use the voice and vote of
25 the United States to oppose any loan from the

1 international financial institution that would
2 benefit the designated foreign person or the
3 designated agency or instrumentality of a for-
4 eign state.

5 (D) The President may direct the Export-
6 Import Bank of the United States, the Overseas
7 Private Investment Corporation, or any other
8 United States Government agency not to ap-
9 prove the issuance of any (or a specified num-
10 ber of) guarantees, insurance, extensions of
11 credit, or participations in the extension of
12 credit.

13 (E) The President may, pursuant to such
14 regulations or guidelines as the President may
15 prescribe, prohibit any United States person
16 from investing in or purchasing significant
17 amounts of equity or debt instruments of the
18 designated foreign person or the designated
19 agency or instrumentality of a foreign state.

20 (F) The President may, pursuant to such
21 regulations or guidelines as the President may
22 prescribe, prohibit any United States agency or
23 instrumentality from procuring, or entering into
24 any contract for the procurement of, any goods,
25 technology, or services, or classes of goods,

1 technology, or services, from the designated for-
2 eign person or the designated agency or instru-
3 mentality of a foreign state.

4 (G) The President may order the heads of
5 the appropriate United States agencies to not
6 issue any (or a specified number of) specific li-
7 censes, and to not grant any other specific au-
8 thority (or a specified number of authorities), to
9 export any goods or technology to the des-
10 ignated foreign person or the designated agency
11 or instrumentality of a foreign state under—

12 (i) the Export Administration Act of
13 1979 (as continued in effect pursuant the
14 International Emergency Economic Powers
15 Act);

16 (ii) the Arms Export Control Act;

17 (iii) the Atomic Energy Act of 1954;

18 or

19 (iv) any other statute that requires
20 the prior review and approval of the
21 United States Government as a condition
22 for the export or re-export of goods or
23 services.

24 (H)(i) The President may exercise all of
25 the powers granted to the President under the

1 International Emergency Economic Powers Act
2 (50 U.S.C. 1701 et seq.) (except that the re-
3 quirements of section 202 of such Act (50
4 U.S.C. 1701) shall not apply) to the extent nec-
5 essary to block and prohibit all transactions in
6 property and interests in property of the des-
7 ignated foreign person if such property and in-
8 terests in property are in the United States,
9 come within the United States, or are or come
10 within the possession or control of a United
11 States person.

12 (ii) The penalties provided for in sub-
13 sections (b) and (c) of section 206 of the Inter-
14 national Emergency Economic Powers Act (50
15 U.S.C. 1705) shall apply to a person that vio-
16 lates, attempts to violate, conspires to violate,
17 or causes a violation of regulations prescribed
18 under clause (i) to the same extent that such
19 penalties apply to a person that commits an un-
20 lawful act described in subsection (a) of such
21 section 206.

22 (I) The President may, pursuant to such
23 regulations as the President may prescribe, pro-
24 hibit any transfers of credit or payments be-
25 tween one or more financial institutions or by,

1 through, or to any financial institution, to the
2 extent that such transfers or payments are sub-
3 ject to the jurisdiction of the United States and
4 involve any interest of the designated foreign
5 person.

6 (c) TRAVEL-RELATED SANCTIONS.—

7 (1) ALIENS INELIGIBLE FOR VISAS, ADMISSION,
8 OR PAROLE.—An alien who is designated as a crit-
9 ical cyber threat under subsection (a) is—

10 (A) inadmissible to the United States;

11 (B) ineligible to receive a visa or other doc-
12 umentation to enter the United States; and

13 (C) otherwise ineligible to be admitted or
14 paroled into the United States or to receive any
15 other benefit under the Immigration and Na-
16 tionality Act (8 U.S.C. 1101 et seq.).

17 (2) CURRENT VISAS REVOKED.—The issuing
18 consular officer, the Secretary of State, or the Sec-
19 retary of Homeland Security (or a designee of either
20 such Secretaries) shall revoke any visa or other
21 entry documentation issued to the foreign person
22 designated as a critical cyber threat under sub-
23 section (a) regardless of when issued. A revocation
24 under this clause shall take effect immediately and
25 shall automatically cancel any other valid visa or

1 entry documentation that is in the possession of
2 such foreign person.

3 (d) ADDITIONAL SANCTIONS WITH RESPECT TO
4 FOREIGN STATES.—

5 (1) IN GENERAL.—The President may impose
6 any of the sanctions described in paragraph (2) with
7 respect to the government of each foreign state that
8 the President has determined aided, abetted, or di-
9 rected a foreign person or agency or instrumentality
10 of a foreign state designated as a critical cyber
11 threat under subsection (a).

12 (2) SANCTIONS DESCRIBED.—The sanctions re-
13 ferred to in paragraph (1) are the following:

14 (A) The President may provide for the
15 withdrawal, limitation, or suspension of non-hu-
16 manitarian or non-trade-related assistance
17 United States development assistance under
18 chapter 1 of part I of the Foreign Assistance
19 Act of 1961.

20 (B) The President may provide for the
21 withdrawal, limitation, or suspension of United
22 States security assistance under part II of the
23 Foreign Assistance Act of 1961.

24 (C) The President may instruct the United
25 States Executive Director to each appropriate

1 international financial institution to oppose, and
2 vote against the extension by such institution of
3 any loan or financial or technical assistance to
4 the government of the foreign state.

5 (D) No item on the United States Muni-
6 tions List (established pursuant to section 38 of
7 the Arms Export Control Act (22 U.S.C.
8 2778)) or the Commerce Control List set forth
9 in Supplement No. 1 to part 774 of title 15,
10 Code of Federal Regulations, may be exported
11 to the government of the foreign state.

12 (E) The President may, pursuant to such
13 regulations as the President may prescribe, pro-
14 hibit any transactions in foreign exchange that
15 are subject to the jurisdiction of the United
16 States and in which the government of the for-
17 eign state has any interest.

18 (F) The President may, pursuant to such
19 regulations as the President may prescribe, pro-
20 hibit any transfers of credit or payments be-
21 tween one or more financial institutions or by,
22 through, or to any financial institution, to the
23 extent that such transfers or payments are sub-
24 ject to the jurisdiction of the United States and

1 involve any interest of the government of the
2 foreign state.

3 (e) EXEMPTIONS, WAIVERS, AND REMOVALS OF
4 SANCTIONS AND DESIGNATIONS.—

5 (1) EXEMPTIONS.—

6 (A) MANDATORY EXEMPTIONS.—The fol-
7 lowing activities shall be exempt from sanctions
8 under subsections (b), (c), and (d):

9 (i) Activities subject to the reporting
10 requirements of title V of the National Se-
11 curity Act of 1947 (50 U.S.C. 413 et seq.),
12 or to any authorized intelligence activities
13 of the United States.

14 (ii) Any transaction necessary to com-
15 ply with United States obligations under
16 the Agreement between the United Nations
17 and the United States of America regard-
18 ing the Headquarters of the United Na-
19 tions, signed June 26, 1947, and entered
20 into force on November 21, 1947, or under
21 the Vienna Convention on Consular Rela-
22 tions, signed April 24, 1963, and entered
23 into force on March 19, 1967, or under
24 other international agreements.

1 (2) WAIVER.—The President may waive, on a
2 case-by-case basis, the imposition of sanctions for a
3 period of not more than one year, and may renew
4 that waiver for additional periods of not more than
5 one year, any sanction or penalty under this section
6 if the President submits to the appropriate congres-
7 sional committees a written determination that the
8 waiver meets one or more of the following require-
9 ments:

10 (A) The waiver is important to the eco-
11 nomic or national security interests of the
12 United States.

13 (B) The waiver will further the enforce-
14 ment of this Act or is for an important law en-
15 forcement purpose.

16 (C) The waiver is for an important human-
17 itarian purpose.

18 (3) REMOVALS OF SANCTIONS AND DESIGNA-
19 TIONS.—The President may prescribe rules and reg-
20 ulations for the removal of sanctions under sub-
21 sections (b), (c), and (d) and the removal of designa-
22 tions under subsection (a) if the President deter-
23 mines that a foreign person, agency or instrumen-
24 tality of a foreign state, or government of a foreign
25 state subject to such sanctions, as the case may be,

1 has verifiably ceased its participation in any of the
2 conduct with respect to which the foreign person,
3 agency or instrumentality of a foreign state, or gov-
4 ernment of a foreign state, as the case may be, was
5 subject to sanctions under this section and has given
6 assurances that it will no longer participate in such
7 conduct.

8 (4) EXCEPTION TO COMPLY WITH UNITED NA-
9 TIONS HEADQUARTERS AGREEMENT.—Sanctions
10 under subsection (c) shall not apply to a foreign per-
11 son if admitting the foreign person into the United
12 States is necessary to permit the United States to
13 comply with the Agreement regarding the Head-
14 quarters of the United Nations, signed at Lake Suc-
15 cess June 26, 1947, and entered into force Novem-
16 ber 21, 1947, between the United Nations and the
17 United States, or other applicable international obli-
18 gations.

19 (f) BRIEFING TO CONGRESS.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of the enactment of this section, and
22 periodically thereafter, the President shall provide to
23 the appropriate congressional committees a briefing
24 on state-sponsored cyber activities against the
25 United States.

1 (2) MATTERS TO BE INCLUDED.—The briefing
2 required by paragraph (1) shall, include the fol-
3 lowing, to the extent the information is available:

4 (A) A list of foreign states that continue to
5 aid, abet, or direct any foreign person or agency
6 or instrumentality of a foreign state to carry
7 out state-sponsored cyber activities against the
8 United States, including—

9 (i) a list of entities within the United
10 States critical infrastructure that are be-
11 lieved to have been, or are currently still,
12 subject to state-sponsored cyber activities
13 by each such foreign state; and

14 (ii) a list of such foreign persons and
15 agencies and instrumentalities of foreign
16 states that the President has reason to be-
17 lieve are engaging, or have engaged in,
18 state-sponsored cyber activities against the
19 United States but are not currently des-
20 ignated under subsection (b).

21 (B) A list of the foreign persons and agen-
22 cies and instrumentalities of foreign states with
23 respect to which the imposition of sanctions
24 were waived or removed under subsection (f).

1 (C) A summary of any efforts made by the
2 Government of the United States to resolve and
3 bring an immediate end to state-sponsored
4 cyber activities against the United States that
5 could result in the designation as a critical
6 cyber threat under subsection (a).

7 (g) DEFINITIONS.—In this section:

8 (1) ADMITTED; ALIEN.—The terms “admitted”
9 and “alien” have the meanings given such terms in
10 section 101 of the Immigration and Nationality Act
11 (8 U.S.C. 1101).

12 (2) APPROPRIATE CONGRESSIONAL COMMIT-
13 TEES.—The term “appropriate congressional com-
14 mittees” means—

15 (A) the Committee on Foreign Affairs, the
16 Committee on Financial Services, the Com-
17 mittee on the Judiciary, the Committee on
18 Oversight and Government Reform, and the
19 Committee on Homeland Security of the House
20 of Representatives; and

21 (B) the Committee on Foreign Relations,
22 the Committee on Banking, Housing, and
23 Urban Affairs, the Committee on the Judiciary,
24 and the Committee on Homeland Security and
25 Governmental Affairs of the Senate.

1 (3) AGENCY OR INSTRUMENTALITY OF A FOR-
2 EIGN STATE.—The term “agency or instrumentality
3 of a foreign state” has the meaning given such term
4 in section 1603(b) of title 28, United States Code.

5 (4) CRITICAL INFRASTRUCTURE SECTOR.—The
6 term “critical infrastructure sector” means any of
7 the designated critical infrastructure sectors identi-
8 fied in the Presidential Policy Directive entitled
9 “Critical Infrastructure Security and Resilience”,
10 numbered 21, and dated February 12, 2013.

11 (5) FOREIGN PERSON.—The term “foreign per-
12 son” means—

13 (A) an individual who is not a United
14 States citizen or an alien lawfully admitted for
15 permanent residence to the United States; or

16 (B) an entity that is not a United States
17 person.

18 (6) FOREIGN STATE.—The term “foreign state”
19 has the meaning given such term in section 1603(a)
20 of title 28, United States Code.

21 (7) KNOWINGLY.—The term “knowingly”, with
22 respect to conduct, a circumstance, or a result,
23 means that a person has actual knowledge, or should
24 have known, of the conduct, the circumstance, or the
25 result.

1 (8) MISAPPROPRIATION.—The term “misappro-
2 piation” means taking or obtaining by improper
3 means, without permission or consent, or under false
4 pretenses.

5 (9) STATE-SPONSORED CYBER ACTIVITIES.—
6 The term “state-sponsored cyber activities” means
7 any cyber-enabled activities that—

8 (A) are carried out by an agency or instru-
9 mentality of a foreign state; or

10 (B) are carried out by a foreign person
11 that is aided, abetted, or directed by a foreign
12 state or an agency or instrumentality of a for-
13 eign state.

14 (10) UNITED STATES PERSON.—The term
15 “United States person” means—

16 (A) a United States citizen or an alien law-
17 fully admitted for permanent residence to the
18 United States; or

19 (B) an entity organized under the laws of
20 the United States or of any jurisdiction within
21 the United States, including a foreign branch of
22 such an entity.

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