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IN THE SENATE OF THE UNITED STATES

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

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

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

1 structure—against the United States in a crisis
2 short of war.”.

3 (3) On March 29, 2017, President Donald J.
4 Trump deemed it necessary to continue the national
5 emergency declared in Executive Order No. 13694
6 as “Significant malicious cyber-enabled activities
7 originating from, or directed by persons located, in
8 whole or in substantial part, outside the United
9 States, continue to pose an unusual and extraor-
10 dinary threat to the national security, foreign policy,
11 and economy of the United States.”.

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

1 (5) There is significant evidence that hackers
2 affiliated with foreign governments have conducted
3 cyber operations targeting companies and critical in-
4 frastructure sectors in the United States as the De-
5 partment of Justice and the Department of the
6 Treasury have announced that—

7 (A) on March 15, 2018, five Russian enti-
8 ties and 19 Russian individuals were designated
9 under the Countering America’s Adversaries
10 Through Sanctions Act, as well as pursuant to
11 Executive Order No. 13694, for interference in
12 the 2016 United States elections and other ma-
13 licious cyber-enabled activities;

14 (B) on March 24, 2016, seven Iranians
15 working for Iran’s Revolutionary Guard Corps-
16 affiliated entities were indicted for conducting
17 distributed denial of service attacks against the
18 financial sector in the United States from 2012
19 to 2013; and

20 (C) on May 19, 2014, five Chinese military
21 hackers were charged for hacking United States
22 companies in the nuclear power, metals, and
23 solar products industries, and engaging in eco-
24 nomic espionage.

1 (6) In May 2017, North Korea released
2 “WannaCry” pseudo-ransomware, which posed a sig-
3 nificant risk to the economy, national security, and
4 the citizens of the United States and the world, as
5 it resulted in the infection of over 300,000 computer
6 systems in more than 150 countries, including in the
7 healthcare sector of the United Kingdom, dem-
8 onstrating the global reach and cost of cyber-enabled
9 malicious activity.

10 (7) In June 2017, Russia carried out the most
11 destructive cyber-enabled operation in history, re-
12 leasing the NotPetya malware that caused billions of
13 dollars’ worth of damage within Ukraine and across
14 Europe, Asia, and the Americas.

15 (8) In May 2018, the Department of State,
16 pursuant to section 3(b) of Executive Order No.
17 13800, prepared recommendations to the President
18 on Deterring Adversaries and Better Protecting the
19 American People From Cyber Threats, which stated
20 “With respect to activities below the threshold of the
21 use of force, the United States should, working with
22 likeminded partners when possible, adopt an ap-
23 proach of imposing swift, costly, and transparent
24 consequences on foreign governments responsible for

1 significant malicious cyber activities aimed at harm-
2 ing U.S. national interests.”.

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

5 (a) DESIGNATION AS A CRITICAL CYBER THREAT
6 ACTOR.—

7 (1) IN GENERAL.—The President, acting
8 through the Secretary of State, and in coordination
9 with other relevant Federal agency heads, shall des-
10 ignate as a critical cyber threat actor—

11 (A) each foreign person and each agency
12 or instrumentality of a foreign state that the
13 President determines to be knowingly respon-
14 sible for or complicit in, or have engaged in, di-
15 rectly or indirectly, state-sponsored cyber activi-
16 ties that are reasonably likely to result in, or
17 have contributed to, a significant threat to the
18 national security, foreign policy, or economic
19 health or financial stability of the United States
20 and that have the purpose or effect of—

21 (i) causing a significant disruption to
22 the availability of a computer or network
23 of computers;

24 (ii) harming, or otherwise significantly
25 compromising the provision of service by, a

1 computer or network of computers that
2 support one or more entities in a critical
3 infrastructure sector;

4 (iii) significantly compromising the
5 provision of services by one or more enti-
6 ties in a critical infrastructure sector;

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

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

16 (vi) interfering with or undermining
17 election processes or institutions by tam-
18 pering with, altering, or causing misappro-
19 priation of data;

20 (B) each foreign person that the President
21 has determined to have knowingly, significantly,
22 and materially assisted, sponsored, or provided
23 financial, material, or technological support for,
24 or goods or services to or in support of, any ac-
25 tivities described in subparagraph (A) by a for-

1 eign person or agency or instrumentality of a
2 foreign state designated as a critical cyber
3 threat actor under subparagraph (A); and

4 (C) each agency or instrumentality of a
5 foreign state that the President has determined
6 to have significantly and materially assisted,
7 sponsored, or provided financial, material, or
8 technological support for, or goods or services
9 to or in support of, any activities described in
10 subparagraph (A) by a foreign person or agency
11 or instrumentality of a foreign state designated
12 as a critical cyber threat actor under subpara-
13 graph (A).

14 (2) PUBLICATION IN FEDERAL REGISTER.—

15 (A) IN GENERAL.—The President shall—

16 (i) publish in the Federal Register a
17 list of each foreign person and each agency
18 or instrumentality of a foreign state des-
19 ignated as a critical cyber threat actor
20 under this subsection; and

21 (ii) regularly update such list not later
22 than 7 days after making any changes to
23 such list, and publish in the Federal Reg-
24 ister such updates.

25 (B) EXCEPTION.—

1 (i) IN GENERAL.—The President may
2 withhold from publication in the Federal
3 Register under subparagraph (A) the iden-
4 tification of any foreign person or agency
5 or instrumentality of a foreign state des-
6 ignated as a critical cyber threat actor
7 under this subsection if the President de-
8 termines that withholding such identifica-
9 tion—

10 (I) in the national interests of
11 the United States; or

12 (II) is for an important law en-
13 forcement purpose.

14 (ii) TRANSMISSION.—If the President
15 exercises the authority under this subpara-
16 graph to withhold from publication in the
17 Federal Register the identification of a for-
18 eign person or agency or instrumentality of
19 a foreign state designated as a critical
20 cyber threat actor under this subsection,
21 the President shall transmit to the appro-
22 priate congressional committees in classi-
23 fied form a report containing any such
24 identification, together with the reasons for
25 such exercise.

1 (b) NON-TRAVEL-RELATED SANCTIONS.—

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

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

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

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

19 (C) The President may direct the United
20 States executive director to each international
21 financial institution to use the voice and vote of
22 the United States to oppose any loan from the
23 international financial institution that would
24 benefit the designated foreign person or the

1 designated agency or instrumentality of a for-
2 eign state.

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

10 (E) The President may, pursuant to such
11 regulations or guidelines as the President may
12 prescribe, prohibit any United States person
13 from investing in or purchasing significant
14 amounts of equity or debt instruments of the
15 designated foreign person.

16 (F) The President may, pursuant to proce-
17 dures the President shall prescribe, which shall
18 include the opportunity to appeal actions under
19 this subparagraph, prohibit any United States
20 agency or instrumentality from procuring, or
21 entering into any contract for the procurement
22 of, any goods, technology, or services, or classes
23 of goods, technology, or services, from the des-
24 ignated foreign person or the designated agency
25 or instrumentality of a foreign state.

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

9 (i) the Export Administration Act of
10 1979 (as continued in effect pursuant the
11 International Emergency Economic Powers
12 Act);

13 (ii) the Arms Export Control Act;

14 (iii) the Atomic Energy Act of 1954;

15 or

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

21 (H)(i) The President may exercise all of
22 the powers granted to the President under the
23 International Emergency Economic Powers Act
24 (50 U.S.C. 1701 et seq.) (except that the re-
25 quirements of section 202 of such Act (50

1 U.S.C. 1701) shall not apply) to the extent nec-
2 essary to block and prohibit all transactions in
3 property and interests in property of the des-
4 ignated foreign person if such property and in-
5 terests in property are in the United States,
6 come within the United States, or are or come
7 within the possession or control of a United
8 States person.

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

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

1 involve any interest of the designated foreign
2 person.

3 (c) TRAVEL-RELATED SANCTIONS.—

4 (1) ALIENS INELIGIBLE FOR VISAS, ADMISSION,
5 OR PAROLE.—An alien who is designated as a crit-
6 ical cyber threat actor under subsection (a) is—

7 (A) inadmissible to the United States;

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

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

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

1 (d) ADDITIONAL SANCTIONS WITH RESPECT TO
2 FOREIGN STATES.—

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

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

12 (A) The President may provide for the
13 withdrawal, limitation, or suspension of non-hu-
14 manitarian or non-trade-related assistance
15 United States development assistance under
16 chapter 1 of part I of the Foreign Assistance
17 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 instruct the United
23 States Executive Director to each appropriate
24 international financial institution to oppose, and
25 vote against the extension by such institution of

1 any loan or financial assistance to the govern-
2 ment of the foreign state.

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

10 (e) IMPLEMENTATION.—The President may exercise
11 all authorities provided under sections 203 and 205 of the
12 International Emergency Economic Powers Act (50
13 U.S.C. 1702 and 1704) to carry out this section.

14 (f) COORDINATION.—To the extent practicable—

15 (1) actions taken by the President pursuant to
16 this section should be coordinated with United
17 States allies and partners; and

18 (2) the Secretary of State should work with
19 United States allies and partners, on a voluntary
20 basis, to lead an international diplomatic initiative
21 to—

22 (A) deter critical cyber threat actors and
23 state-sponsored cyber activities; and

1 (B) provide mutual support to such allies
2 and partners participating in such initiative to
3 respond to such state-sponsored cyber activities.

4 (g) EXEMPTIONS, WAIVERS, AND REMOVALS OF
5 SANCTIONS AND DESIGNATIONS.—

6 (1) MANDATORY EXEMPTIONS.—The following
7 activities shall be exempt from sanctions under sub-
8 sections (b), (c), and (d):

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

14 (B) Any transaction necessary to comply
15 with United States obligations under the Agree-
16 ment between the United Nations and the
17 United States of America regarding the Head-
18 quarters of the United Nations, signed June
19 26, 1947, and entered into force on November
20 21, 1947, or under the Vienna Convention on
21 Consular Relations, signed April 24, 1963, and
22 entered into force on March 19, 1967, or under
23 other international obligations.

24 (2) WAIVER.—The President may waive the im-
25 position of sanctions described in this section for a

1 period of not more than 1 year, and may renew such
2 waiver for additional periods of not more than 1
3 year, if the President transmits to the appropriate
4 congressional committees a written determination
5 that such waiver meets one or more of the following
6 requirements:

7 (A) Such waiver is in the national interests
8 of the United States.

9 (B) Such waiver will further the enforce-
10 ment of this Act or is for an important law en-
11 forcement purpose.

12 (C) Such waiver is for an important hu-
13 manitarian purpose.

14 (3) REMOVALS OF SANCTIONS AND DESIGNA-
15 TIONS.—The President may prescribe rules and reg-
16 ulations for the removal of sanctions under sub-
17 sections (b), (c), and (d) and the removal of designa-
18 tions under subsection (a) if the President deter-
19 mines that a foreign person, agency or instrumen-
20 tality of a foreign state, or government of a foreign
21 state subject to such sanctions or such designations,
22 as the case may be, has verifiably ceased its partici-
23 pation in any of the conduct with respect to which
24 such foreign person, agency or instrumentality of a
25 foreign state, or government of a foreign state was

1 subject to such sanctions or designation, as the case
2 may be, under this section, and has given assurances
3 that such foreign person, agency or instrumentality
4 of a foreign state, or government of a foreign state,
5 as the case may be, will no longer participate in such
6 conduct.

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

18 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion may be construed to limit the authority of the Presi-
20 dent under the International Emergency Economic Powers
21 Act (50 U.S.C. 1701 et seq.) or any other provision of
22 law to impose sanctions to address critical cyber threat
23 actors and malicious state-sponsored cyber activities.

24 (i) DEFINITIONS.—In this section:

1 (1) ADMITTED; ALIEN.—The terms “admitted”
2 and “alien” have the meanings given such terms in
3 section 101 of the Immigration and Nationality Act
4 (8 U.S.C. 1101).

5 (2) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” means—

8 (A) the Committee on Foreign Affairs, the
9 Committee on Financial Services, the Com-
10 mittee on the Judiciary, the Committee on
11 Oversight and Government Reform, and the
12 Committee on Homeland Security of the House
13 of Representatives; and

14 (B) the Committee on Foreign Relations,
15 the Committee on Banking, Housing, and
16 Urban Affairs, the Committee on the Judiciary,
17 and the Committee on Homeland Security and
18 Governmental Affairs of the Senate.

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

23 (4) CRITICAL INFRASTRUCTURE SECTOR.—The
24 term “critical infrastructure sector” means any of
25 the designated critical infrastructure sectors identi-

1 fied in the Presidential Policy Directive entitled
2 “Critical Infrastructure Security and Resilience”,
3 numbered 21, and dated February 12, 2013.

4 (5) FOREIGN PERSON.—The term “foreign per-
5 son” means a person that is not a United States
6 person.

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

10 (7) KNOWINGLY.—The term “knowingly”, with
11 respect to conduct, a circumstance, or a result,
12 means that a person has actual knowledge, or should
13 have known, of the conduct, the circumstance, or the
14 result.

15 (8) MISAPPROPRIATION.—The term “misappro-
16 priation” means taking or obtaining by improper
17 means, without permission or consent, or under false
18 pretenses.

19 (9) STATE-SPONSORED CYBER ACTIVITIES.—
20 The term “state-sponsored cyber activities” means
21 any malicious cyber-enabled activities that—

22 (A) are carried out by a government of a
23 foreign state or an agency or instrumentality of
24 a foreign state; or

1 (B) are carried out by a foreign person
2 that is aided, abetted, or directed by a govern-
3 ment of a foreign state or an agency or instru-
4 mentality of a foreign state.

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

7 (A) a United States citizen or an alien law-
8 fully admitted for permanent residence to the
9 United States; or

10 (B) an entity organized under the laws of
11 the United States or of any jurisdiction within
12 the United States, including a foreign branch of
13 such an entity.

Passed the House of Representatives September 5,
2018.

Attest:

KAREN L. HAAS,
Clerk.