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S. 3378

To impose sanctions with respect to state-sponsored cyber activities against the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 23, 2018

Mr. GARDNER (for himself and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To impose sanctions with respect to 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:

8 (1) On February 13, 2018, the Director of Na-
9 tional Intelligence stated in his testimony before the
10 Select Committee on Intelligence of the Senate that

1 “Russia, China, Iran, and North Korea will pose the
2 greatest cyber threats to the United States during
3 the next year” through the use of cyber operations
4 as low-cost tools of statecraft, and assessed that
5 those countries would “work to use cyber operations
6 to achieve strategic objectives unless they face clear
7 repercussions for their cyber operations”.

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

21 (3) On March 29, 2017, President Donald J.
22 Trump deemed it necessary to continue the national
23 emergency declared in Executive Order 13694 (50
24 U.S.C. 1701 note; relating to blocking the property
25 of certain persons engaging in significant malicious

1 cyber-enabled activities) as “[s]ignificant malicious
2 cyber-enabled activities originating from, or directed
3 by persons located, in whole or in substantial part,
4 outside the United States, continue to pose an un-
5 usual and extraordinary threat to the national secu-
6 rity, foreign policy, and economy of the United
7 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 Commander of the United States Cyber Com-
12 mand Admiral Michael Rogers, submitted joint testi-
13 mony to the Committee on Armed Services of the
14 Senate that stated that “[a]s of late 2016 more than
15 30 nations are developing offensive cyber attack ca-
16 pabilities” and that “[p]rotecting 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 entities and critical infra-
24 structure sectors in the United States as the De-
25 partment of Justice has announced that—

1 (A) on March 24, 2016, 7 Iranians work-
2 ing for entities affiliated with Iran’s Revolu-
3 tionary Guard Corps were indicted for con-
4 ducting distributed denial of service attacks
5 against the financial sector in the United States
6 from 2012 to 2013; and

7 (B) on May 19, 2014, 5 Chinese military
8 hackers were charged for hacking United States
9 entities in the nuclear power, metals, and solar
10 products industries and engaging in economic
11 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 more than 300,000
17 computer systems in more than 150 countries, in-
18 cluding in the healthcare sector of the United King-
19 dom, demonstrating the global reach and cost of
20 cyber-enabled malicious activity.

21 (7) In June 2017, the Russian Federation car-
22 ried out the most destructive cyber-enabled oper-
23 ation in history, releasing the NotPetya malware
24 that caused billions of dollars’ worth of damage

1 within Ukraine and across Europe, Asia, and the
2 Americas.

3 (8) On May 31, 2018, the Department of State,
4 pursuant to section 3(b) of Executive Order 13800
5 (82 Fed. Reg. 22391; relating to strengthening the
6 cybersecurity of Federal networks and critical infra-
7 structure), issued a document entitled “Rec-
8 ommendations to the President on Deterring Adver-
9 saries and Better Protecting the American People
10 From Cyber Threats”, which stated, “With respect
11 to activities below the threshold of the use of force,
12 the United States should, working with likeminded
13 partners when possible, adopt an approach of impos-
14 ing swift, costly, and transparent consequences on
15 foreign governments responsible for significant mali-
16 cious cyber activities aimed at harming U.S. na-
17 tional interests.”.

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

20 (a) DESIGNATION AS A CRITICAL CYBER THREAT
21 ACTOR.—

22 (1) IN GENERAL.—The President, acting
23 through the Secretary of State, and in coordination
24 with the heads of other relevant Federal agencies,
25 shall designate as a critical cyber threat actor—

1 (A) each foreign person and each agency
2 or instrumentality of a foreign state that the
3 President determines to be knowingly respon-
4 sible for or complicit in, or to have knowingly
5 engaged in, directly or indirectly, state-spon-
6 sored cyber activities that are reasonably likely
7 to result in, or have contributed to, a signifi-
8 cant threat to the national security, foreign pol-
9 icy, or economic health or financial stability of
10 the United States and that have the purpose or
11 effect of—

12 (i) causing a significant disruption to
13 the availability of a computer or network
14 of computers;

15 (ii) harming, or otherwise significantly
16 compromising the provision of service by, a
17 computer or network of computers that
18 support one or more entities in a critical
19 infrastructure sector;

20 (iii) significantly compromising the
21 provision of services by one or more enti-
22 ties in a critical infrastructure sector;

23 (iv) causing a significant misappro-
24 priation of funds or economic resources,
25 trade secrets, personal identifiers, or finan-

1 cial information for commercial or competi-
2 tive advantage or private financial gain;

3 (v) destabilizing the financial sector of
4 the United States by tampering with, alter-
5 ing, or causing a misappropriation of data;
6 or

7 (vi) interfering with or undermining
8 election processes or institutions by tam-
9 pering with, altering, or causing misappro-
10 priation of data;

11 (B) each foreign person that the President
12 determines to have knowingly, significantly, and
13 materially assisted, sponsored, or provided fi-
14 nancial, material, or technological support for,
15 or goods or services to or in support of, any ac-
16 tivities described in subparagraph (A) by a for-
17 eign person or agency or instrumentality of a
18 foreign state designated as a critical cyber
19 threat actor under subparagraph (A); and

20 (C) each agency or instrumentality of a
21 foreign state that the President determines to
22 have significantly and materially assisted, spon-
23 sored, or provided financial, material, or tech-
24 nological support for, or goods or services to or
25 in support of, any activities described in sub-

1 paragraph (A) by a foreign person or agency or
2 instrumentality of a foreign state designated as
3 a critical cyber threat actor under subpara-
4 graph (A).

5 (2) PUBLICATION IN FEDERAL REGISTER.—

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

7 (i) publish in the Federal Register a
8 list of each foreign person and each agency
9 or instrumentality of a foreign state des-
10 ignated as a critical cyber threat actor
11 under this subsection; and

12 (ii) regularly update the list not later
13 than 7 days after making any changes to
14 the list, and publish in the Federal Reg-
15 ister such updates.

16 (B) EXCEPTION.—

17 (i) IN GENERAL.—The President may
18 withhold from publication in the Federal
19 Register under subparagraph (A) the iden-
20 tification of any foreign person or agency
21 or instrumentality of a foreign state des-
22 ignated as a critical cyber threat actor
23 under this subsection if the President de-
24 termines that withholding such identifica-
25 tion—

1 (I) is important to the national
2 security interests of the United
3 States; or

4 (II) is for an important law en-
5 forcement purpose.

6 (ii) TRANSMISSION.—If the President
7 exercises the authority under this subpara-
8 graph to withhold from publication in the
9 Federal Register the identification of a for-
10 eign person or agency or instrumentality of
11 a foreign state designated as a critical
12 cyber threat actor under this subsection,
13 the President shall transmit to the appro-
14 priate congressional committees in classi-
15 fied form a report containing any such
16 identification, together with the reasons for
17 exercising such authority.

18 (b) NON-TRAVEL-RELATED SANCTIONS.—

19 (1) IN GENERAL.—The President shall impose
20 one or more of the applicable sanctions described in
21 paragraph (2) with respect to each foreign person
22 and each agency or instrumentality of a foreign
23 state designated as a critical cyber threat actor
24 under subsection (a).

1 (2) SANCTIONS DESCRIBED.—The sanctions to
2 be imposed under paragraph (1) with respect to a
3 foreign person or an agency or instrumentality of a
4 foreign state designated as a critical cyber threat
5 actor under subsection (a) are the following:

6 (A) The President may provide for the
7 withdrawal, limitation, or suspension of United
8 States security assistance under part II of the
9 Foreign Assistance Act of 1961 (22 U.S.C.
10 2301 et seq.) to or involving the foreign person
11 or agency or instrumentality.

12 (B) The President may direct the United
13 States executive director to each international
14 financial institution to use the voice and vote of
15 the United States to oppose any loan from the
16 international financial institution that would
17 benefit the foreign person or agency or instru-
18 mentality.

19 (C) The President may, pursuant to such
20 regulations or guidelines as the President may
21 prescribe, prohibit any United States person
22 from investing in or purchasing significant
23 amounts of equity or debt instruments of the
24 foreign person or agency or instrumentality.

1 (D) The President may, pursuant to such
2 regulations or guidelines as the President shall
3 prescribe (which shall include the opportunity
4 to appeal actions under this subparagraph),
5 prohibit any United States agency or instru-
6 mentality from procuring, or entering into any
7 contract for the procurement of, any goods,
8 technology, or services, or classes of goods,
9 technology, or services, from the foreign person
10 or agency or instrumentality.

11 (E) The President may order the heads of
12 the appropriate United States agencies to not
13 issue any (or a specified number of) specific li-
14 censes, and to not grant any other specific au-
15 thority (or a specified number of authorities), to
16 export, reexport, or transfer any goods or tech-
17 nology originating in the United States to the
18 foreign person or agency or instrumentality
19 under—

20 (i) the Export Administration Act of
21 1979 (50 U.S.C. 4601 et seq.) (as contin-
22 ued in effect pursuant the International
23 Emergency Economic Powers Act (50
24 U.S.C. 1701 et seq.)) (or any successor
25 Act);

1 (ii) the Arms Export Control Act (22
2 U.S.C. 2751 et seq.);

3 (iii) the Atomic Energy Act of 1954
4 (42 U.S.C. 2011 et seq.); or

5 (iv) any other statute that requires
6 the prior review and approval of the
7 United States Government as a condition
8 for the export, reexport, or transfer of
9 goods or services originating in the United
10 States.

11 (F)(i) The President may exercise all of
12 the powers granted to the President under the
13 International Emergency Economic Powers Act
14 (50 U.S.C. 1701 et seq.) (except that the re-
15 quirements of section 202 of such Act (50
16 U.S.C. 1701) shall not apply) to the extent nec-
17 essary to block and prohibit all transactions in
18 property and interests in property of the foreign
19 person or agency or instrumentality if such
20 property and interests in property are in the
21 United States, come within the United States,
22 or are or come within the possession or control
23 of a United States person.

24 (ii) The penalties provided for in sub-
25 sections (b) and (c) of section 206 of the Inter-

1 national Emergency Economic Powers Act (50
 2 U.S.C. 1705) shall apply to a person that vio-
 3 lates, attempts to violate, conspires to violate,
 4 or causes a violation of regulations prescribed
 5 under clause (i) to the same extent that such
 6 penalties apply to a person that commits an un-
 7 lawful act described in subsection (a) of such
 8 section 206.

9 (G) The President may, pursuant to such
 10 regulations as the President may prescribe, pro-
 11 hibit any transfers of credit or payments be-
 12 tween one or more financial institutions or by,
 13 through, or to any financial institution, to the
 14 extent that such transfers or payments are sub-
 15 ject to the jurisdiction of the United States and
 16 involve any interest of the foreign person or
 17 agency or instrumentality.

18 (c) TRAVEL-RELATED SANCTIONS.—

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

22 (A) inadmissible to the United States;

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

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

5 (2) CURRENT VISAS REVOKED.—The issuing
6 consular officer, the Secretary of State, or the Sec-
7 retary of Homeland Security (or a designee of either
8 such Secretary) shall revoke any visa or other entry
9 documentation issued to an alien designated as a
10 critical cyber threat actor under subsection (a) re-
11 gardless of when the visa or other documentation is
12 issued. A revocation under this paragraph shall take
13 effect immediately and shall automatically cancel
14 any other valid visa or entry documentation that is
15 in the possession of the alien.

16 (d) ADDITIONAL SANCTIONS WITH RESPECT TO
17 FOREIGN STATES.—

18 (1) IN GENERAL.—The President may impose
19 any of the sanctions described in paragraph (2) with
20 respect to a foreign state if the President determines
21 that the government of the foreign state aided, abet-
22 ted, or directed a foreign person or agency or instru-
23 mentality of a foreign state designated as a critical
24 cyber threat actor under subsection (a).

1 (2) SANCTIONS DESCRIBED.—The sanctions
2 that may be imposed under paragraph (1) with re-
3 spect to a foreign state are the following:

4 (A) The President may provide for the
5 withdrawal, limitation, or suspension of non-hu-
6 manitarian or non-trade-related assistance
7 United States development assistance under
8 chapter 1 of part I of the Foreign Assistance
9 Act of 1961 (22 U.S.C. 2151 et seq.) to the
10 foreign state.

11 (B) The President may provide for the
12 withdrawal, limitation, or suspension of United
13 States security assistance under part II of the
14 Foreign Assistance Act of 1961 (22 U.S.C.
15 2301 et seq.) to the foreign state.

16 (C) The President may instruct the United
17 States Executive Director to each appropriate
18 international financial institution to use the
19 voice and vote of the United States to oppose
20 the extension by the institution of any loan or
21 financial assistance to the foreign state.

22 (D) The President may prohibit the expor-
23 tation to the foreign state of any item on the
24 United States Munitions List established pursu-
25 ant to section 38 of the Arms Export Control

1 Act (22 U.S.C. 2778) or the Commerce Control
2 List set forth in Supplement No. 1 to part 774
3 of title 15, Code of Federal Regulations.

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

8 (f) EXEMPTIONS, WAIVERS, AND REMOVALS OF
9 SANCTIONS AND DESIGNATIONS.—

10 (1) EXEMPTIONS.—

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

14 (i) Activities subject to the reporting
15 requirements of title V of the National Se-
16 curity Act of 1947 (50 U.S.C. 3091 et
17 seq.), or to any authorized intelligence ac-
18 tivities of the United States.

19 (ii) Any transaction necessary to com-
20 ply with—

21 (I) United States obligations
22 under—

23 (aa) the Agreement between
24 the United Nations and the
25 United States of America regard-

1 ing the Headquarters of the
2 United Nations, signed June 26,
3 1947, and entered into force on
4 November 21, 1947; or

5 (bb) the Vienna Convention
6 on Consular Relations, signed
7 April 24, 1963, and entered into
8 force on March 19, 1967; or

9 (II) other international commit-
10 ments of the United States.

11 (2) WAIVER.—The President may waive the im-
12 position of sanctions under this section for a period
13 of not more than one year, and may renew such
14 waiver for additional periods of not more than one
15 year, if the President submits to the appropriate
16 congressional committees a written determination
17 that such waiver meets one or more of the following
18 requirements:

19 (A) Such waiver is important to the eco-
20 nomic or national security interests of the
21 United States.

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

1 (C) Such waiver is for an important hu-
2 manitarian purpose.

3 (3) REMOVALS OF SANCTIONS AND DESIGNA-
4 TIONS.—The President may prescribe rules and reg-
5 ulations for the removal of sanctions under sub-
6 sections (b), (c), and (d) and the removal of designa-
7 tions under subsection (a) if the President deter-
8 mines that a foreign person, agency or instrumen-
9 tality of a foreign state, or foreign state subject to
10 such sanctions or designation, as the case may be,
11 has—

12 (A) verifiably ceased its participation in
13 any of the conduct with respect to which such
14 foreign person, agency or instrumentality, or
15 foreign state was subject to such sanctions or
16 designation, as the case may be, under this sec-
17 tion; and

18 (B) has given assurances that such foreign
19 person, agency or instrumentality, or foreign
20 state, as the case may be, will no longer partici-
21 pate in such conduct.

22 (g) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion may be construed to limit the authority of the Presi-
24 dent under the International Emergency Economic Powers
25 Act (50 U.S.C. 1701 et seq.) or any other provision of

1 law to impose sanctions to address critical cyber threat
2 actors and malicious state-sponsored cyber activities.

3 (h) DEFINITIONS.—In this section:

4 (1) ADMITTED; ALIEN.—The terms “admitted”
5 and “alien” have the meanings given such terms in
6 section 101 of the Immigration and Nationality Act
7 (8 U.S.C. 1101).

8 (2) APPROPRIATE CONGRESSIONAL COMMIT-
9 TEES.—The term “appropriate congressional com-
10 mittees” means—

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

17 (B) the Committee on Foreign Relations,
18 the Committee on Banking, Housing, and
19 Urban Affairs, the Committee on the Judiciary,
20 and the Committee on Homeland Security and
21 Governmental Affairs of the Senate.

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

1 (4) CRITICAL INFRASTRUCTURE SECTOR.—The
2 term “critical infrastructure sector” means any of
3 the critical infrastructure sectors identified in Presi-
4 dential Policy Directive No. 21, entitled “Critical In-
5 frastructure Security and Resilience” and dated
6 February 12, 2013.

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

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

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

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

22 (9) STATE-SPONSORED CYBER ACTIVITIES.—
23 The term “state-sponsored cyber activities” means
24 any malicious cyber-enabled activities that—

1 (A) are carried out by a government of a
2 foreign state or an agency or instrumentality of
3 a foreign state; or

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

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

10 (A) a United States citizen or an alien law-
11 fully admitted for permanent residence to the
12 United States; or

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

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