

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3289

OFFERED BY MR. SMITH

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Hong Kong Human Rights and Democracy Act of 2019”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Statement of policy.

Sec. 4. Amendments to the United States-Hong Kong Policy Act of 1992.

Sec. 5. Report on enforcement of United States export control and sanctions laws by Hong Kong.

Sec. 6. Protecting United States interests with respect to Hong Kong.

Sec. 7. Sanctions relating to undermining fundamental freedoms and autonomy in Hong Kong.

Sec. 8. Sanctions reports.

SEC. 2. DEFINITIONS.

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs of the House of Representatives;

(B) the Committee on Financial Services of the House of Representatives;

(C) the Committee on the Judiciary of the House of Representatives.

(D) the Committee on Foreign Relations of the Senate;

(E) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(F) the Committee on the Judiciary of the Senate.

(2) CHINA.—The term “China” means the People’s Republic of China.

(3) SOCIAL CREDIT SYSTEM.—The term “social credit system” means a system proposed by the Government of China and scheduled for implementation by 2020 that would use existing financial credit systems, public records, online activity, and other tools of surveillance to aggregate data on every Chinese citizen and business and use that data to monitor, shape, and rate certain financial, social, religious, or political behaviors.

SEC. 3. STATEMENT OF POLICY.

It is the policy of the United States—

(1) to reaffirm the principles and objectives set forth in the United States-Hong Kong Policy Act of 1992 (Public Law 102–383), namely that—

(A) the United States has “a strong interest in the continued vitality, prosperity, and stability of Hong Kong”;

(B) “[s]upport for democratization is a fundamental principle of United States foreign policy” and therefore “naturally applies to United States policy toward Hong Kong”;

(C) “the human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong [and] serve as a basis for Hong Kong’s continued economic prosperity”; and

(D) Hong Kong must remain sufficiently autonomous from the People’s Republic of China to “justify treatment under a particular

law of the United States, or any provision thereof, different from that accorded the People's Republic of China";

(2) to support the high degree of autonomy and fundamental rights and freedoms of the people of Hong Kong, as enumerated by—

(A) the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, done at Beijing December 19, 1984 (referred to in this Act as the "Joint Declaration");

(B) the International Covenant on Civil and Political Rights, done at New York December 19, 1966; and

(C) the Universal Declaration of Human Rights, done at Paris December 10, 1948.

(3) to support the democratic aspirations of the people of Hong Kong, including the "ultimate aim" of the selection of the Chief Executive and all members of the Legislative Council by universal suffrage, as articulated in the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (referred to in this Act as the "Basic Law");

(4) to urge the Government of the People's Republic of China and the Government of the Hong Kong Special Autonomous Region to uphold their commitment to the people of Hong Kong, including providing a high degree of autonomy for Hong Kong as articulated in the Joint Declaration and the Basic Law;

(5) to support the robust exercise by residents of Hong Kong of the rights to free speech, the press, and other fundamental freedoms as provided by the Basic Law and the Joint Declaration;

(6) to support freedom from arbitrary or unlawful arrest, detention, or imprisonment for all Hong Kong residents, as provided to them by the Basic Law and the Joint Declaration;

(7) to draw international attention to any violations by the Government of the People's Republic of China of the fundamental rights

of the people of Hong Kong and any encroachment upon the autonomy guaranteed to Hong Kong by the Basic Law and the Joint Declaration;

(8) to protect United States citizens and legal permanent residents living in Hong Kong as well as people visiting and transiting through Hong Kong; and

(9) to maintain the economic and cultural ties that provide significant benefits to both the United States and Hong Kong.

SEC. 4. AMENDMENTS TO THE UNITED STATES-HONG KONG POLICY ACT OF 1992.

(a) CERTIFICATIONS.—Title II of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5721 et seq.) is amended by adding at the end the following new section:

“SEC. 205. SECRETARY OF STATE CERTIFICATION REGARDING THE AUTONOMY OF HONG KONG.

“(a) CERTIFICATION.—

“(1) IN GENERAL.—The Secretary of State shall annually submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a certification, in conjunction with and taking into consideration the contents of the report required in section 301, regarding whether Hong Kong continues to warrant treatment under particular treaties, international agreements, and United States laws, or any provisions thereof, specified in paragraph (2) in the same manner as such treaties, international agreements, and laws were applied to Hong Kong as of the date of enactment of this section.

“(2) PROVISIONS SPECIFIED.—The treaties, international agreements, and United States laws specified in this paragraph are the following:

“(A) Commercial agreements.

“(B) Law enforcement cooperation, including extradition matters.

“(C) Nonproliferation commitments.

“(D) Sanctions enforcement.

“(E) Export control agreements, including enforcement of export controls with respect to dual use technologies.

“(F) Formal treaties and agreements between the United States and Hong Kong, including agreements related to taxation and currency exchange.

“(G) Other particular laws of the United States, or any provisions thereof, that accord to Hong Kong treatment different to that accorded to the People’s Republic of China.

“(H) Other bilateral or multilateral agreements determined relevant by the Secretary.

“(3) CONTENTS.—Each certification under paragraph (1) shall include the following:

“(A) An evaluation of the Government of Hong Kong’s autonomous decision-making within the executive, legislative, and judicial branches, with respect to—

“(i) upholding the rule of law; and

“(ii) protecting the rights enumerated in—

“(I) the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong, done at Beijing December 19, 1984 (the ‘Joint Declaration’);

“(II) the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (the ‘Basic Law’);

“(III) the Universal Declaration of Human Rights, done at Paris December 10, 1948; and

“(IV) the International Covenant on Civil and Political Rights, done at New York December 19, 1966.

“(4) FACTORS FOR CONSIDERATION.—In making a certification under paragraph (1), the Secretary of State should consider the terms, obligations, and expectations expressed in the Joint Declaration and the Basic Law.

“(5) ADDITIONAL CERTIFICATIONS.—Notwithstanding the annual requirement for certifications under paragraph (1), the Secretary of State may issue additional certifications at any time if the Secretary determines that circumstances in Hong Kong warrant such.

“(6) FORM.—Each certification under paragraph (1) and any additional certifications under paragraph (5) shall be submitted in unclassified form but may include a classified annex if the Secretary of State determines such is necessary.

“(b) WAIVER.—The Secretary of State may waive the application of subsection (a) in, whole or in part, if—

“(1) the Secretary determines that such a waiver is in the national security interests of the United States or would protect the autonomy of Hong Kong; and

“(2) on or before the date on which such a waiver takes effect, the Secretary notifies the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of the intent to waive such subsection.

“(c) PUBLIC AVAILABILITY.—The unclassified portion of the certifications required under subsection (a) shall be made available to the public, including through publication on the Department of State website.”.

(b) VISA APPLICANTS.—Title II of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5721 et seq.), as amended by subsection (a), is further amended by adding at the end the following new section:

“SEC. 206. TREATMENT OF HONG KONG APPLICANTS FOR VISAS TO ENTER THE UNITED STATES.

“It is the sense of Congress that applications for visas to enter the United States, including for work or study, which are submitted by otherwise qualified applicants from Hong Kong should not be denied solely on the basis of politically-motivated arrest, detention, or other adverse government action taken against such applicants as a result of the participation by such applicants in protest activities, and that the Secretary of State should make efforts to implement such policy, ensure consular officers make determinations in accordance with such policy, and coordinate with representatives of other countries to encourage the adoption of compatible policies.”.

(c) Reporting Requirements.— Section 301 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5731) is amended in subsection (a):

(1) by deleting “2024” and inserting in its place “2027”;

(2) in paragraph (7) by deleting “and”; and

(3) prior to the final period by inserting the following paragraphs:

“(9) An evaluation of China’s ability to limit Hong Kong’s autonomy with respect to the treaties, international agreements, and United States laws specified in paragraph (2) as a result of actions by the Government of the People’s Republic of China that are inconsistent with its commitments under the Basic Law or the Joint Declaration.

“(10) An evaluation of limitations to Hong Kong’s autonomy with respect to the treaties, international agreements, and United States laws specified in paragraph (2) resulting from actions by the Government of the Hong Kong Special Autonomous Region that are inconsistent with its commitments under the Basic Law or the Joint Declaration.

“(11) An evaluation of specific impacts to any areas of cooperation between the United States and Hong Kong as a result of limits, whether self-imposed or otherwise, to Hong Kong’s autonomy, including any failures of the Hong Kong Government to fulfill obligations with the United States under the treaties, international agreements, and United States laws specified in paragraph (2).

“(12) A description of specific actions taken by the United States Government to mitigate the negative impact to United States interests of limitations, whether self-imposed or otherwise, to Hong Kong’s autonomy or any failures to fulfill obligations with the United States under the treaties, international agreements, and United States laws specified in paragraph (2); and

“(13) An analysis of whether the rescission of special treatment under any particular treaties, international agreements, or particular laws of the United States, or any provisions thereof would contribute to further erosion of Hong Kong’s autonomy.

SEC. 5. REPORT ON ENFORCEMENT OF UNITED STATES EXPORT CONTROL AND SANCTIONS LAWS BY HONG KONG.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the committees specified in subsection (b) a report that includes the following:

(1) An assessment of the policies and actions of the Government of the Hong Kong Special Autonomous Region to enforce the Export Control Reform Act of 2018 (subtitle B of title XVII of Public Law 115–232) and other relevant provisions of United States law related to export controls.

(2) To the extent possible, an identification of the following:

(A) Any items that were transferred from Hong Kong in violation of such laws.

(B) The countries and persons to which such items were transferred.

(C) How such items were used.

(3) An assessment of whether United States origin items (including software, technology, and services) have been transferred from Hong Kong to China in violation of United States law and have been used by

China for mass surveillance, predictive policing, or for the social credit system.

(4) An assessment of the policies and actions of the Government of the Hong Kong Special Autonomous Region to enforce sanctions imposed by the United States and the United Nations.

(5) A description of the types of goods and services transshipped or reexported through Hong Kong in violation of such sanctions to—

(A) North Korea or Iran; or

(B) other countries, regimes, or persons subject to such sanctions for engaging in activities—

(i) relating to—

(I) international terrorism, international narcotics trafficking, or the proliferation of weapons of mass destruction; or

(II) corruption and violations of human rights; or

(ii) that otherwise present a threat to the national security, foreign policy, or economy of the United States.

(b) COMMITTEES SPECIFIED.—The committees specified in this subsection are the following:

(1) The Committee on Foreign Relations of the Senate.

(2) The Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) The Committee on Foreign Affairs of the House of Representatives.

(c) FORM OF REPORT.—The report required under subsection (a) shall be transmitted in unclassified form, but may include a classified annex.

SEC. 6. PROTECTING UNITED STATES INTERESTS WITH RESPECT TO HONG KONG.

(a) **POLICY STATEMENTS.**—It is the policy to the United States—

(1) to safeguard United States citizens and lawful permanent residents from extradition, rendition, or abduction to China from Hong Kong for trial, detention, or any other purpose;

(2) to safeguard United States businesses in Hong Kong from economic coercion and intellectual property theft;

(3) pursuant to section 103(7) of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5713(7)), to encourage United States businesses “to continue to operate in Hong Kong in accordance with applicable United States and Hong Kong law”; and

(4) pursuant to section 201(b) of such Act (22 U.S.C. 5721(b)), to evaluate as circumstances require the Government of Hong Kong is “legally competent to carry out its obligations” under treaties and international agreements established between the United States and Hong Kong.

(b) **NOTIFICATION TO CONGRESS.**—

(1) **DETERMINATION.**—The Secretary of State shall, with respect to any legislation proposed or enacted by the Government of Hong Kong, determine, not later than 30 days after such legislation is proposed or enacted, if such proposed or enacted legislation would—

(A) put United States citizens or lawful permanent residents at risk for rendition to China or other countries with which the United States Government does not have an extradition agreement; or

(B) otherwise have a significant negative impact on United States interests with respect to Hong Kong.

(2) **NOTIFICATION.**—If the Secretary of State makes a determination in the affirmative under paragraph (1), the Secretary shall submit to the appropriate congressional committees a notification relating thereto that includes the following:

(A) An assessment of the potential risks of the proposed or enacted legislation described in such paragraph to United States national interests, including risks to United States citizens or lawful permanent residents residing in, traveling to, or transiting through Hong Kong.

(B) A strategy for protecting United States interests in Hong Kong with respect to the proposed or enacted legislation described in such paragraph.

SEC. 7. SANCTIONS RELATING TO UNDERMINING FUNDAMENTAL FREEDOMS AND AUTONOMY IN HONG KONG.

(a) IDENTIFICATION OF PERSONS RESPONSIBLE FOR UNDERMINING FUNDAMENTAL FREEDOMS AND AUTONOMY IN HONG KONG.—

(1) IN GENERAL.—The President shall transmit to the appropriate congressional committees a report, in accordance with paragraph (2), that identifies each foreign person that the President determines, based on credible information, is knowingly responsible for any of the following:

(A) The actual or threatened rendition, arbitrary detention, torture, or forced confession of any individual in Hong Kong.

(B) Repeated acts or decisions which contravene the shared obligations of China and Hong Kong under the Joint Declaration and Basic Law and undermine the national interests of the United States in Hong Kong's autonomy and the rule of law.

(C) Other gross violations of internationally recognized human rights human rights in Hong Kong.

(2) TIMING OF REPORTS.—The President shall transmit—

(A) the report required under paragraph (1)—

(i) not later than 180 days after the date of the enactment of this Act; and

(ii) not less frequently than annually thereafter in conjunction with the publication of the report required under section 301 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5731); and

(B) an update to the report required under paragraph (1) not later than 15 days after any new credible information described in such paragraph becomes available.

(3) CONSIDERATION OF CERTAIN INFORMATION.—In preparing the report required under paragraph (1), the President shall consider the following:

(A) Information provided jointly by the chairperson and ranking member of each of the appropriate congressional committees.

(B) Credible information obtained by other countries or nongovernmental organizations that monitor violations of human rights abuses.

(4) FORM.—The report required under paragraph (1) shall be submitted in unclassified form but may include a classified annex.

(b) IMPOSITION OF SANCTIONS.—The President shall impose the sanctions described in subsection (c) with respect to each foreign person identified in the report required under subsection (a)(1).

(c) SANCTIONS DESCRIBED.—The sanctions described in this subsection are the following:

(1) ASSET BLOCKING.—The President shall exercise all of the powers granted to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) to the extent necessary to block and prohibit all transactions in property and interests in property of a foreign person identified in the report required under subsection (a)(1) if such property and interests in property are in the United States, come within the United States, or come within the possession or control of a United States person.

(2) INELIGIBILITY FOR VISAS, ADMISSION, OR PAROLE.—

(A) VISAS, ADMISSION, OR PAROLE.—A foreign person described in subsection (a)(1) and his or her immediate family members is—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) CURRENT VISAS REVOKED.—

(i) IN GENERAL.—A foreign person described in subsection (a)(1) is subject to revocation of any visa or other entry documentation regardless of when the visa or other entry documentation is or was issued.

(ii) IMMEDIATE EFFECT.—A revocation under clause (i) shall—

(I) take effect immediately; and

(II) automatically cancel any other valid visa or entry documentation that is in the alien's possession.

(C) EXCEPTION TO COMPLY WITH INTERNATIONAL OBLIGATIONS.—Sanctions under this paragraph shall not apply with respect to a foreign person if admitting or paroling such person into the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations.

(3) PENALTIES.—The penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a foreign person that violates, attempts

to violate, conspires to violate, or causes a violation of paragraph (1) to the same extent that such penalties apply to a person that commits an unlawful act described in subsection (a) of such section 206.

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

(e) WAIVER.—The President may waive the application of sanctions under this section with respect to a foreign person identified in the report required under subsection (a)(1) if the President determines and certifies to the appropriate congressional committees that such a waiver is in the national interest of the United States.

(f) TERMINATION OF SANCTIONS.—The President may terminate the application of sanctions under this section with respect to a foreign person if the President determines and reports to the appropriate congressional committees not less than 15 days before such termination takes effect that—

(1) credible information exists that such person did not engage in the activity for which sanctions were imposed;

(2) such person has been prosecuted appropriately for the activity for which sanctions were imposed;

(3) such person has credibly demonstrated a significant change in behavior, has paid an appropriate consequence for the activity for which sanctions were imposed, and has credibly committed to not engage in an activity described in subsection (a)(1) in the future; or

(4) the termination of the sanctions is in the national security interests of the United States.

(g) EXCEPTION RELATING TO THE IMPORTATION OF GOODS.—

(1) IN GENERAL.—The authorities and requirements to impose sanctions under this section shall not include the authority or requirement to impose sanctions on the importation of goods.

(2) GOOD DEFINED.—In this subsection, the term “good” means any article, natural or man-made substance, material, supply or manufactured

product, including inspection and test equipment, and excluding technical data.

(h) DEFINITIONS.—In this section:

(1) ADMITTED.—The term “admitted” has the meanings given such term in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

(2) FOREIGN PERSON.—The term “foreign person” means a person that is not a United States person.

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

(4) PERSON.—The term “person” means an individual or entity.

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

(A) a United States citizen or an alien lawfully admitted for permanent residence to the United States; or

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

SEC. 8. SANCTIONS REPORTS.

(a) IN GENERAL.—The President shall transmit to the appropriate congressional committees a report that includes the following:

(1) A list of each foreign person with respect to which the President imposed sanctions under section 7 during the year preceding the transmission of such report.

(2) A description of the type of sanctions imposed with respect to each such person.

(3) The number of foreign persons with respect to which the President terminated such sanctions during such year.

(4) The dates on which such sanctions were imposed or terminated, as applicable.

(5) The reasons for imposing or terminating such sanctions.

(6) A description of the efforts of the President to encourage the governments of other countries to impose sanctions that are similar to such sanctions.

(b) FORM.—The report required under subsection (a) shall be transmitted in unclassified form but may contain a classified annex.

(c) PUBLIC AVAILABILITY.—The unclassified portion of the report required under subsection (a) shall be made available to the public, including through publication in the Federal Register.

(d) NONAPPLICABILITY OF CONFIDENTIALITY REQUIREMENT WITH RESPECT TO VISA RECORDS.—The President shall publish the report required under subsection (a) without regard to the requirements of section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)) with respect to confidentiality of records pertaining to the issuance or refusal of visas or permits to enter the United States.