

### 115TH CONGRESS 2D SESSION

# H. R. 5576

# **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 as low-cost tools of statecraft, and assessed that 12 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".
  - (2) The 2017 Worldwide Threat Assessment of the United States Intelligence Community stated that "The potential for surprise in the cyber realm will increase in the next year and beyond as billions more digital devices are connected—with relatively little built-in security—and both nation states and malign actors become more emboldened and better equipped in the use of increasingly widespread cyber toolkits. The risk is growing that some adversaries will conduct cyber attacks—such as data deletion or localized and temporary disruptions of critical infra-

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- structure—against the United States in a crisis short of war.".
- (3) On March 29, 2017, President Donald J. Trump deemed it necessary to continue the national emergency declared in Executive Order No. 13694 "Significant malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States, continue to pose an unusual and extraor-dinary threat to the national security, foreign policy, and economy of the United States.".
  - (4) On January 5, 2017, former Director of National Intelligence, James Clapper, former Undersecretary of Defense for Intelligence, Marcel Lettre, and the Commander of the United States Cyber Command, Admiral Michael Rogers, submitted joint testimony to the Committee on Armed Services of the Senate that stated "As of late 2016 more than 30 nations are developing offensive cyber attack capabilities" and that "Protecting critical infrastructure, such as crucial energy, financial, manufacturing, transportation, communication, and health systems, will become an increasingly complex national 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

companies in the nuclear power, metals, and

solar products industries, and engaging in eco-

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- May 2017, North Korea released (6)In "WannaCry" pseudo-ransomware, which posed a sig-nificant risk to the economy, national security, and the citizens of the United States and the world, as it resulted in the infection of over 300,000 computer systems in more than 150 countries, including in the healthcare sector of the United Kingdom, dem-onstrating the global reach and cost of cyber-enabled malicious activity.
  - (7) In June 2017, Russia carried out the most destructive cyber-enabled operation in history, releasing the NotPetya malware that caused billions of dollars' worth of damage within Ukraine and across Europe, Asia, and the Americas.
  - (8) In May 2018, the Department of State, pursuant to section 3(b) of Executive Order No. 13800, prepared recommendations to the President on Deterring Adversaries and Better Protecting the American People From Cyber Threats, which stated "With respect to activities below the threshold of the use of force, the United States should, working with likeminded partners when possible, adopt an approach of imposing swift, costly, and transparent 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.

# (b) Non-Travel-Related Sanctions.—

- (1) In general.—The President shall impose one or more of the applicable sanctions described in paragraph (2) with respect to each foreign person and each agency or instrumentality of a foreign state designated as a critical cyber threat actor under subsection (a).
- (2) Sanctions described in this paragraph are the following:
  - (A) The President may provide for the withdrawal, limitation, or suspension of non-humanitarian United States development assistance under chapter 1 of part I of the Foreign Assistance Act of 1961.
  - (B) The President may provide for the withdrawal, limitation, or suspension of United States security assistance under part II of the Foreign Assistance Act of 1961.
  - (C) The President may direct the United States executive director to each international financial institution to use the voice and vote of the United States to oppose any loan from the international financial institution that would benefit the designated foreign person or the

designated agency or instrumentality of a foreign state.

- (D) The President may direct the Overseas Private Investment Corporation, or any other United States Government agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit.
- (E) The President may, pursuant to such regulations or guidelines as the President may prescribe, prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the designated foreign person.
- (F) The President may, pursuant to procedures the President shall prescribe, which shall include the opportunity to appeal actions under this subparagraph, prohibit any United States agency or instrumentality from procuring, or entering into any contract for the procurement of, any goods, technology, or services, or classes of goods, technology, or services, from the designated foreign person or the designated agency 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

U.S.C. 1701) shall not apply) to the extent necessary to block and prohibit all transactions in property and interests in property of the designated foreign person if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.

- (ii) 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 person that violates, attempts to violate, conspires to violate, or causes a violation of regulations prescribed under clause (i) to the same extent that such penalties apply to a person that commits an unlawful act described in subsection (a) of such section 206.
- (I) The President may, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between one or more financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject 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

- period of not more than 1 year, and may renew such waiver for additional periods of not more than 1 year, if the President transmits to the appropriate congressional committees a written determination that such waiver meets one or more of the following requirements:
  - (A) Such waiver is in the national interests of the United States.
    - (B) Such waiver will further the enforcement of this Act or is for an important law enforcement purpose.
    - (C) Such waiver is for an important humanitarian purpose.
  - (3) Removals of sanctions and designations.—The President may prescribe rules and regulations for the removal of sanctions under subsections (b), (c), and (d) and the removal of designations under subsection (a) if the President determines that a foreign person, agency or instrumentality of a foreign state, or government of a foreign state subject to such sanctions or such designations, as the case may be, has verifiably ceased its participation in any of the conduct with respect to which such foreign person, agency or instrumentality of a foreign state, or government of a foreign state was

2 may be, under this section, and has given assurances 3 that such foreign person, agency or instrumentality

subject to such sanctions or designation, as the case

- 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.

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- 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.
- (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

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

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:

Clerk.

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# AN ACT

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