

118TH CONGRESS
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H. R. 6349

To prohibit or require notification with respect to certain activities of United States persons involving countries of concern, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2023

Mr. McCAUL (for himself and Mr. MEEKS) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To prohibit or require notification with respect to certain activities of United States persons involving countries of concern, 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 “Preventing Adversaries
5 from Developing Critical Capabilities Act”.

6 **SEC. 2. EXERCISE OF AUTHORITIES UNDER THE INTER-**
7 **NATIONAL EMERGENCY ECONOMIC POWERS**
8 **ACT.**

9 (a) IN GENERAL.—The President may exercise all
10 authorities provided under the International Emergency

1 Economic Powers Act (50 U.S.C. 1701 et seq.) necessary
2 to carry out the provisions of this Act, including authori-
3 ties to impose penalties under section 206 of such Act.

4 (b) DELEGATION.—The President may delegate the
5 authorities described in subsection (a) to the head of any
6 Federal agency the President determines appropriate in
7 order to carry out the provisions of this Act.

8 **SEC. 3. PROHIBITION ON COVERED ACTIVITIES IN COV-**
9 **ERED SECTORS THAT POSE PARTICULARLY**
10 **ACUTE THREATS TO UNITED STATES NA-**
11 **TIONAL SECURITY.**

12 (a) IDENTIFICATION OF CATEGORIES OF TECH-
13 NOLOGIES AND PRODUCTS.—

14 (1) IN GENERAL.—Not later than one year
15 after the date of the enactment of this Act, and an-
16 nually thereafter as described in paragraph (2), the
17 President—

18 (A) shall identify categories of technologies
19 and products in covered sectors that may pose
20 a particularly acute threat to the national secu-
21 rity of the United States if developed or ac-
22 quired by a country of concern; and

23 (B) publish a list of the categories of tech-
24 nologies and products identified under para-
25 graph (1) in the Federal Register.

1 (2) UPDATES.—The President shall annually
2 review and update the list of the categories of tech-
3 nologies and products identified under paragraph
4 (1)(A) and update the Federal Register under para-
5 graph (1)(B) as appropriate.

6 (b) PROHIBITION ON COVERED ACTIVITIES.—The
7 President shall, on or after the date on which the initial
8 list of categories of technologies and products is published
9 in the Federal Register pursuant to subsection (a)(1)(B),
10 prescribe, subject to public notice and comment, regula-
11 tions to prohibit a United States person from engaging,
12 directly or indirectly, in a covered activity involving a cat-
13 egory of technologies and products on such list of cat-
14 egories of technologies and products in a covered sector.
15 Such regulations should—

16 (1) require that a United States person take all
17 reasonable steps to prohibit and prevent any trans-
18 action by a foreign entity under the control of the
19 United States person that would be a prohibited
20 transaction if engaged in by a United States person;
21 and

22 (2) exclude any transaction consisting of the ac-
23 quisition of an equity or other interest in an entity
24 located outside a country of concern, where the
25 President has determined that the government of the

1 country in which that entity is established or has its
2 principal place of business has in place a program
3 for the restriction of certain activities involving
4 countries of concern that is comparable to the provi-
5 sions provided for in this Act.

6 (c) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that the covered sectors include certain categories
8 of technologies and products that would pose a particu-
9 larly acute threat to the national security of the United
10 States if developed or acquired by a country of concern,
11 and that the President should identify certain technologies
12 and products in the covered sectors as categories of tech-
13 nologies and products in covered sectors for purposes of
14 subsection (a)(1).

15 **SEC. 4. MANDATORY NOTIFICATION OF COVERED ACTIVI-**
16 **TIES IN COVERED SECTORS THAT MAY POSE**
17 **THREATS TO UNITED STATES NATIONAL SE-**
18 **CURITY.**

19 (a) IDENTIFICATION OF CATEGORIES OF TECH-
20 NOLOGIES AND PRODUCTS.—Not later than one year after
21 the date of the enactment of this Act, the President
22 shall—

23 (1) identify categories of technologies and prod-
24 ucts in covered sectors that may pose a threat to the

1 national security of the United States if developed or
2 acquired by a country of concern;

3 (2) publish a list of the categories of tech-
4 nologies and products identified under paragraph (1)
5 in the Federal Register; and

6 (3) annually thereafter, review the categories of
7 technologies and products identified under para-
8 graph (1) and publish an updated list of the cat-
9 egories of technologies and products in the Federal
10 Register under paragraph (2) if the list identified in
11 paragraph (2) has changed.

12 (b) MANDATORY NOTIFICATION.—

13 (1) IN GENERAL.—Beginning on the date that
14 is 90 days after the date on which the initial list of
15 categories of technologies and products is published
16 in the Federal Register pursuant to subsection
17 (a)(2), a United States person engaging in a covered
18 activity involving a category identified in subsection
19 (a)(1), or controlling a foreign entity engaging in an
20 activity that would be a covered activity if engaged
21 in by a United States person, shall submit to the
22 President a complete written notification of the ac-
23 tivity not later than 14 days after the completion
24 date of the activity.

25 (2) CIRCULATION OF NOTIFICATION.—

1 (A) IN GENERAL.—The President shall,
2 upon receipt of a notification under paragraph
3 (1), promptly inspect the notification for com-
4 pleteness.

5 (B) INCOMPLETE NOTIFICATION.—If a no-
6 tification submitted under paragraph (1) is in-
7 complete, the President shall promptly inform
8 the United States person that submits the noti-
9 fication that the notification is not complete
10 and provide an explanation for relevant mate-
11 rial respect in which the notification is not com-
12 plete.

13 (3) IDENTIFICATION OF NON-NOTIFIED ACTIV-
14 ITY.—The President shall establish a process to
15 identify a covered activity involving a category iden-
16 tified under subsection (a)(1) for which—

17 (A) a notification is not submitted to the
18 President under paragraph (1); and

19 (B) information is reasonably available.

20 (c) CONFIDENTIALITY OF INFORMATION.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), any information or documentary material
23 filed with the President pursuant to this section
24 shall be exempt from disclosure under section
25 552(b)(3) of title 5, United States Code, and no

1 such information or documentary material may be
2 made public by any government agency or Member
3 of Congress.

4 (2) EXCEPTIONS.—Subject to appropriate con-
5 fidentiality and classification requirements, the ex-
6 emption from disclosure provided by paragraph (1)
7 shall not prevent the disclosure of the following:

8 (A) Information relevant to any adminis-
9 trative or judicial action or proceeding.

10 (B) Information provided to Congress or
11 any of the appropriate congressional commit-
12 tees.

13 (C) Information important to national se-
14 curity analysis or actions of the President to
15 any domestic government entity, or to any for-
16 eign governmental entity of an ally or partner
17 of the United States, under the direction and
18 authorization of the President, only to the ex-
19 tent necessary for national security purposes.

20 (D) Information that the parties have con-
21 sented to be disclosed to third parties.

22 **SEC. 5. REPORTING REQUIREMENTS.**

23 (a) IN GENERAL.—Not later than one year after the
24 date on which the regulations prescribed under section 6
25 take effect, and not less frequently than annually there-

1 after, the President shall submit to the appropriate con-
2 gressional committees a report that—

3 (1) lists all notifications submitted under sec-
4 tion 4(b) during the year preceding submission of
5 the report, disaggregated by—

6 (A) sector;

7 (B) covered activity;

8 (C) covered foreign entity; and

9 (D) country of concern;

10 (2) an assessment of whether to amend the reg-
11 ulations, including whether to amend the definition
12 of “covered sectors” to enhance national security;

13 (3) provides additional context and information
14 regarding trends in the sectors, the types of covered
15 activity, and the countries involved in those notifica-
16 tions, including—

17 (A) the location of the relevant covered for-
18 eign entities; and

19 (B) the country in which the United States
20 person or foreign entity controlled by such
21 United States person involved in the relevant
22 covered activity is located; and

23 (4) assesses the overall impact of those notifica-
24 tions, including recommendations for—

1 (A) expanding existing Federal programs
2 to support the production or supply of covered
3 sectors in the United States, including the po-
4 tential of existing authorities to address any re-
5 lated national security concerns; and

6 (B) the continuation, expansion, or modi-
7 fication of the implementation and administra-
8 tion of this Act.

9 (b) FORM.—Each report required by this section
10 shall be submitted in unclassified form, but may include
11 a classified annex.

12 (c) PROHIBITION ON DISCLOSURE.—Information
13 contained in each report required by this section may be
14 withheld from disclosure only to the extent otherwise per-
15 mitted by statute, except that all information included
16 pursuant to subsection (a)(1) shall be withheld from public
17 disclosure.

18 **SEC. 6. REQUIREMENT FOR REGULATIONS.**

19 (a) IN GENERAL.—Not later than 180 days after the
20 date on which the initial list of categories of technologies
21 and products have been published in the Federal Register
22 pursuant to sections 3(a)(1)(B) and 4(a)(2), the President
23 shall prescribe and finalize proposed regulations to carry
24 out this Act.

1 (b) ELEMENTS.—Regulations prescribed to carry out
2 this Act shall specify—

3 (1) the types of activities that will be considered
4 to be covered activities;

5 (2) the technologies and products in covered
6 sectors with respect to which covered activities are
7 prohibited under section 3(b) or require a notifica-
8 tion under section 4(b); and

9 (3) a process by which parties can ask ques-
10 tions and get timely guidance as to whether a cov-
11 ered activity is prohibited under section 3(b) or re-
12 quires a notification under section 4(b).

13 (c) REQUIREMENTS FOR CERTAIN REGULATIONS.—
14 The President shall prescribe regulations further defining
15 the terms used in this Act, including the terms “covered
16 activity”, “covered foreign entity”, and “party”, to maxi-
17 mize the effectiveness of carrying out this Act in accord-
18 ance with subchapter II of chapter 5 and chapter 7 of
19 title 5 (commonly known as the “Administrative Proce-
20 dure Act”).

21 (d) PUBLIC NOTICE AND COMMENT.—Regulations
22 issued pursuant to subsection (a) shall be subject to public
23 notice and comment.

1 (e) LOW-BURDEN REGULATIONS.—In prescribing
2 regulations under this section, the President shall, to the
3 extent practicable, structure the regulations—

4 (1) to minimize the cost and complexity of com-
5 pliance for affected parties;

6 (2) to ensure the benefits of the regulations
7 outweigh their costs;

8 (3) to adopt the least burdensome alternative
9 that achieves regulatory objectives;

10 (4) to prioritize transparency and stakeholder
11 involvement in the process of prescribing the regula-
12 tions; and

13 (5) to regularly review and streamline existing
14 regulations promulgated pursuant to this Act to re-
15 duce redundancy and complexity.

16 (f) PENALTIES WITH RESPECT TO UNLAWFUL
17 ACTS.—Regulations issued under this section shall, con-
18 sistent with the authority provided by section 2(a), provide
19 for the imposition of civil penalties for violations of this
20 section, that involve—

21 (1) engaging in a covered activity prohibited
22 under section 3(b) pursuant to the regulations
23 issued under this section;

24 (2) failing to submit a timely notification under
25 section 4(b) with respect to a covered activity or to

1 submit other information as required by the des-
2 ignated agency; or

3 (3) submitting a material misstatement or omit-
4 ting a material fact in any information submitted in
5 a notification under section 4(b).

6 (g) ENFORCEMENT.—Consistent with the authority
7 provided by section 2(a), the President may direct the At-
8 torney General to seek appropriate relief in the district
9 courts of the United States, in order to implement and
10 enforce this Act.

11 (h) CONGRESSIONAL NOTIFICATION.—The President
12 shall submit to the appropriate congressional committees
13 all regulations prescribed to carry out this Act not later
14 than 30 days before such regulations are to take effect.

15 **SEC. 7. MULTILATERAL ENGAGEMENT AND COORDINA-**
16 **TION.**

17 (a) IN GENERAL.—The President shall delegate the
18 authorities and functions under this section to the Sec-
19 retary of State.

20 (b) AUTHORITIES.—The Secretary of State, in co-
21 ordination with the heads or other relevant Federal agen-
22 cies, should—

23 (1) conduct bilateral and multilateral engage-
24 ment with the governments of countries that are al-
25 lies and partners of the United States to promote

1 and increase coordination of protocols and proce-
2 dures to facilitate the effective implementation of
3 and appropriate compliance with the prohibitions
4 and notifications pursuant to this Act;

5 (2) upon adoption of protocols and procedures
6 described in paragraph (1), work with those govern-
7 ments to establish mechanisms for sharing informa-
8 tion, including trends, with respect to such activities;
9 and

10 (3) work with and encourage the governments
11 of countries that are allies and partners of the
12 United States to develop similar mechanisms of their
13 own.

14 (c) STRATEGY FOR MULTILATERAL ENGAGEMENT
15 AND COORDINATION.—Not later than 180 days after the
16 date of the enactment of this Act, the Secretary of State,
17 in coordination with the heads of other relevant Federal
18 agencies, should—

19 (1) develop a strategy to work with the govern-
20 ments of countries that are allies and partners of
21 the United States to develop mechanisms that are
22 comparable to the prohibitions and notifications pur-
23 suant to this Act; and

1 (2) assess opportunities to provide technical as-
2 sistance to those countries with respect to the devel-
3 opment of those mechanisms.

4 (d) REPORT.—Not later than one year after the date
5 of the enactment of this Act, and annually thereafter for
6 4 years, the Secretary of State shall submit to the appro-
7 priate congressional committees a report that includes—

8 (1) a discussion of any strategy developed pur-
9 suant to subsection (c)(1), including key tools and
10 objectives for the development of comparable mecha-
11 nisms by the governments of allies and partners of
12 the United States;

13 (2) a list of partner and allied countries to tar-
14 get for cooperation in developing their own screening
15 programs;

16 (3) the status of the strategy’s implementation
17 and outcomes; and

18 (4) a description of impediments to the estab-
19 lishment of comparable mechanisms by governments
20 of allies and partners of the United States.

21 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) IN GENERAL.—There is authorized to be appro-
23 priated \$25,000,000, to be derived from amounts other-
24 wise authorized to be appropriated to the President, for
25 each of the first two fiscal years beginning on or after

1 the date of the enactment of this Act, to carry out this
2 Act, including to provide outreach to industry and persons
3 affected by this Act.

4 (b) HIRING AUTHORITY.—

5 (1) PRESIDENT.—The President may appoint,
6 without regard to the provisions of sections 3309
7 through 3318 of title 5, United States Code, not
8 more than 15 candidates directly to positions in the
9 competitive service (as defined in section 2102 of
10 that title).

11 (2) AGENCY.—The head of the Federal depart-
12 ment or agency designated under section 2(b) to
13 hold primary responsibility for administering this
14 Act may appoint, without regard to the provisions of
15 sections 3309 through 3318 of title 5, United States
16 Code, not fewer than 25 candidates directly to posi-
17 tions in the competitive service (as defined in section
18 2102 of that title) of such department or agency.

19 (3) PRIMARY RESPONSIBILITY.—The primary
20 responsibility of individuals in positions authorized
21 to be hired under this subsection shall be to admin-
22 ister this Act.

23 **SEC. 9. RULE OF CONSTRUCTION.**

24 Nothing in this Act may be construed to—

1 (1) restrain or deter United States activities
2 abroad if such activities do not pose a risk to the na-
3 tional security of the United States; or

4 (2) alter or negate the authority of the Presi-
5 dent under any authority, process, regulation, inves-
6 tigation, enforcement measure, or review provided by
7 or established under any other provision of Federal
8 law, or any other authority of the President or the
9 Congress under the Constitution of the United
10 States.

11 **SEC. 10. NATIONAL INTEREST WAIVER.**

12 (a) IN GENERAL.—Subject to subsection (b), the
13 President is authorized to exempt from any applicable pro-
14 hibition or notification requirement any activity deter-
15 mined by the President, in consultation with the heads of
16 relevant Federal agencies, as appropriate, to be in the na-
17 tional interest of the United States.

18 (b) CONGRESSIONAL NOTIFICATION.—The President
19 shall—

20 (1) notify the appropriate congressional com-
21 mittees not later than 48 hours after issuing a waiv-
22 er under subsection (a); and

23 (2) include in such notification an identification
24 of the national interest justifying the use of the
25 waiver.

1 **SEC. 11. DEFINITIONS.**

2 In this Act:

3 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
4 **TEES.**—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Foreign Affairs, the
7 Committee on Financial Services, the Com-
8 mittee on Ways and Means, the Committee on
9 Appropriations, and the Permanent Select Com-
10 mittee on Intelligence of the House of Rep-
11 resentatives; and

12 (B) the Committee on Foreign Relations,
13 the Committee on Banking, Housing, and
14 Urban Affairs, the Committee on Finance, the
15 Committee on Appropriations, and the Select
16 Committee on Intelligence of the Senate.

17 (2) **COUNTRY OF CONCERN.**—The term “coun-
18 try of concern”—

19 (A) means—

20 (i) the Democratic People’s Republic
21 of North Korea;

22 (ii) the People’s Republic of China, in-
23 cluding the Hong Kong Special Adminis-
24 trative Region and the Macau Special Ad-
25 ministrative Region;

26 (iii) the Russian Federation; and

1 (iv) the Islamic Republic of Iran; and
2 (B) includes any other country the Presi-
3 dent determines necessary to ensure a country
4 specified in clause (i), (ii), (iii), or (iv) of sub-
5 paragraph (A) is unable to circumvent the pro-
6 visions of this Act and the regulations issued
7 pursuant to this Act.

8 (3) COVERED ACTIVITY.—

9 (A) IN GENERAL.—Subject to such regula-
10 tions as may be prescribed in accordance with
11 section 7, and except as provided in subpara-
12 graph (B), the term “covered activity” means
13 any activity engaged in by a United States per-
14 son that involves—

15 (i) an acquisition by such United
16 States person of an equity interest or con-
17 tingent equity interest, or monetary capital
18 contribution, in a covered foreign entity,
19 directly or indirectly, by contractual com-
20 mitment or otherwise, with the goal of gen-
21 erating income or gain;

22 (ii) an arrangement for an interest
23 held by such United States person in the
24 short- or long-term debt obligations of a
25 covered foreign entity that includes govern-

1 ance rights that are characteristic of an
2 equity investment, management, or other
3 important rights;

4 (iii) the establishment of a wholly
5 owned subsidiary in a country of concern,
6 such as a greenfield investment, for the
7 purpose of production, design, testing,
8 manufacturing, fabrication, or development
9 related to one or more covered sectors;

10 (iv) the establishment by such United
11 States person of a joint venture in a coun-
12 try of concern or with a covered foreign en-
13 tity for the purpose of production, design,
14 testing, manufacturing, fabrication, or re-
15 search, or other contractual or other com-
16 mitments involving a covered foreign entity
17 to jointly research and develop new innova-
18 tion, including through the transfer of cap-
19 ital or intellectual property or other busi-
20 ness proprietary information; or

21 (v) the acquisition by a United States
22 person with a covered foreign entity of—

23 (I) operational cooperation, such
24 as through supply or support arrange-
25 ments;

1 (II) the right to board represen-
2 tation (as an observer, even if limited,
3 or as a member) or an executive role
4 (as may be defined through regula-
5 tion) in a covered foreign entity;

6 (III) the ability to direct or influ-
7 ence such operational decisions as
8 may be defined through such regula-
9 tions;

10 (IV) formal governance represen-
11 tation in any operating affiliate, such
12 as a portfolio company, of a covered
13 foreign entity; or

14 (V) a new relationship to share
15 or provide business services, such as
16 financial services, marketing services,
17 maintenance, or assembly functions;
18 or

19 (vi) knowingly directing transactions
20 by foreign persons that would constitute
21 covered activity if engaged in by a United
22 States person.

23 (B) EXCEPTIONS.—The term “covered ac-
24 tivity” does not include—

1 (i) any transaction the value of which
2 the President determines is de minimis, as
3 defined in regulations prescribed in accord-
4 ance with section 6;

5 (ii) any category of transactions that
6 the President determines is in the national
7 interest of the United States, as may be
8 defined in regulations prescribed in accord-
9 ance with section 6;

10 (iii) an investment in—

11 (I) a publicly traded security (as
12 such term is defined in section
13 3(a)(10) of the Securities Exchange
14 Act of 1934); or

15 (II) an index fund, mutual fund,
16 exchange-traded fund, or a similar in-
17 strument (including associated deriva-
18 tives) offered by an investment com-
19 pany (as such term is defined in sec-
20 tion 3(a)(1) of the Investment Com-
21 pany Act of 1940), or by a private in-
22 vestment fund;

23 (III) a venture capital fund, pri-
24 vate equity fund, fund of funds, or
25 other pooled investment funds, as the

1 limited partner, in each case in which
2 the limited partner's contribution is
3 solely capital in a limited partnership
4 structure and—

5 (aa) the limited partner can-
6 not make managerial decisions, is
7 not responsible for any debts be-
8 yond its investment, and does not
9 have the ability (formally or in-
10 formally) to influence or partici-
11 pate in the fund's or a covered
12 foreign entity's decision making
13 or operations; and

14 (bb) the investment is below
15 a de minimis threshold to be de-
16 termined by the President;

17 (iv) the acquisition of the equity or
18 other interest owned or held by a covered
19 foreign entity in an entity or assets located
20 outside of a country of concern in which
21 the United States person is acquiring all
22 interests in the entity or assets held by
23 covered foreign entity;

1 (v) an intracompany transfer of funds
2 from a United States parent company to a
3 subsidiary located in a country of concern;

4 (vi) a transaction made pursuant to a
5 binding, uncalled capital commitment en-
6 tered into before the date on which the
7 regulations prescribed in accordance with
8 section 6 take effect; or

9 (vii) any ordinary or administrative
10 business transaction as may be defined in
11 such regulations.

12 (4) COVERED FOREIGN ENTITY.—Subject to
13 regulations prescribed in accordance with section 6,
14 the term “covered foreign entity” means the fol-
15 lowing:

16 (A) Any entity that is incorporated in, has
17 a principal place of business in, or is organized
18 under the laws of a country of concern.

19 (B) Any entity the equity securities of
20 which are traded in the ordinary course of busi-
21 ness on one or more exchanges in a country of
22 concern.

23 (C) Any agency or instrumentality of the
24 government of a country of concern.

1 (D) Any other entity that is not a United
2 States person and that meets such criteria as
3 may be specified by the President in such regu-
4 lations prescribed in accordance with section 6.

5 (5) COVERED SECTORS.—Subject to regulations
6 prescribed in accordance with section 6, the term
7 “covered sectors” includes sectors within the fol-
8 lowing areas:

9 (A) Semiconductors and microelectronics.

10 (B) Artificial intelligence.

11 (C) Quantum information science and
12 technology.

13 (D) Hypersonics.

14 (E) High-performance computing and
15 supercomputing.

16 (6) PARTY.—The term “party”, with respect to
17 an activity, has the meaning given that term in reg-
18 ulations prescribed in accordance with section 7.

19 (7) UNITED STATES PERSON.—The term
20 “United States person” means—

21 (A) an individual who is a United States
22 citizen or an alien lawfully admitted for perma-
23 nent residence to the United States; or

24 (B) an entity organized under the laws of
25 the United States or of any jurisdiction within

1 the United States, including any foreign branch
2 of such an entity.

○