

116TH CONGRESS
1ST SESSION

S. 602

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2019

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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cyber Deterrence and
5 Response Act of 2019”.

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 these 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 that “The potential for surprise in the cyber realm
11 will 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 short
20 of war.”.

21 (3) On March 29, 2017, President Donald J.
22 Trump considered it necessary to continue the na-
23 tional emergency declared in Executive Order 13694
24 (50 U.S.C. 1701 note; relating to blocking the prop-
25 erty of certain persons engaging in significant mali-

1 cious cyber-enabled activities) as “Significant mali-
2 cious cyber-enabled activities originating from, or di-
3 rected by persons located, in whole or in substantial
4 part, outside the United States, continue to pose an
5 unusual and extraordinary threat to the national se-
6 curity, 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 the Commander of the United States Cyber
12 Command, Admiral Michael Rogers, submitted joint
13 testimony to the Committee on Armed Services of
14 the Senate that stated that “as of late 2016 more
15 than 30 nations are developing offensive cyber at-
16 tack capabilities” and that “Protecting critical infra-
17 structure, such as crucial energy, financial, manu-
18 facturing, 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 companies and critical in-
24 frastructure sectors in the United States as the De-

1 partment of Justice and the Department of the
2 Treasury have announced that—

3 (A) on March 15, 2018, 5 Russian entities
4 and 19 Russian individuals were designated
5 under the Countering America’s Adversaries
6 Through Sanctions Act (Public Law 115–44;
7 131 Stat. 886), as well as pursuant to Execu-
8 tive Order 13694, for interference in the United
9 States elections in 2016 and other malicious
10 cyber-enabled activities;

11 (B) on March 24, 2016, 7 Iranians work-
12 ing for entities affiliated with Iran’s Revolu-
13 tionary Guard Corps were indicted for con-
14 ducting distributed denial of service attacks
15 against the financial sector in the United States
16 from 2012 to 2013; and

17 (C) on May 19, 2014, 5 Chinese military
18 hackers were charged for hacking United States
19 companies in the nuclear power, metals, and
20 solar products industries, and engaging in eco-
21 nomic espionage.

22 (6) In May 2017, North Korea released the
23 WannaCry pseudo-ransomware, which posed a sig-
24 nificant risk to the economy, national security, and
25 the citizens of the United States and the world, as

1 it resulted in the infection of more than 300,000
2 computer systems in more than 150 countries, in-
3 cluding in the healthcare sector of the United King-
4 dom, demonstrating the global reach and cost of
5 cyber-enabled malicious activity.

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

11 (8) In May 2018, the Department of State,
12 pursuant to section 3(b) of Executive Order 13800
13 (6 U.S.C. 1501 note prec.; relating to strengthening
14 the cybersecurity of Federal networks and critical in-
15 frastructure), prepared recommendations to the
16 President on deterring adversaries and better pro-
17 tecting the people of the United States from cyber
18 threats, which stated "With respect to activities
19 below the threshold of the use of force, the United
20 States should, working with likeminded partners
21 when possible, adopt an approach of imposing swift,
22 costly, and transparent consequences on foreign gov-
23 ernments responsible for significant malicious cyber
24 activities aimed at harming U.S. national interests."

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

3 (a) DESIGNATION AS A CRITICAL CYBER THREAT
4 ACTOR.—

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

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

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

22 (ii) harming, or otherwise significantly
23 compromising the provision of service by, a
24 computer or network of computers that
25 support one or more entities in a critical
26 infrastructure sector;

1 (iii) significantly compromising the
2 provision of services by one or more enti-
3 ties in a critical infrastructure sector;

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

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

13 (vi) interfering with or undermining
14 election processes or institutions by tam-
15 pering with, altering, or causing a mis-
16 appropriation of data;

17 (B) each foreign person that the President
18 has determined to have knowingly, significantly,
19 and materially assisted, sponsored, or provided
20 financial, material, or technological support for,
21 or goods or services to or in support of, any ac-
22 tivities described in subparagraph (A) by a for-
23 eign person or agency or instrumentality of a
24 foreign state designated as a critical cyber
25 threat actor under subparagraph (A); and

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

11 (2) TRANSMISSION TO CONGRESS.—Not later
12 than 7 days after designating a foreign person or
13 agency or instrumentality of a foreign state as a
14 critical cyber threat actor under paragraph (1), the
15 President shall transmit to the appropriate congress-
16 sional committees in classified or unclassified form a
17 report identifying the designee.

18 (b) NON-TRAVEL-RELATED SANCTIONS.—

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

1 (2) SANCTIONS DESCRIBED.—The sanctions de-
2 scribed in this paragraph to be imposed on a foreign
3 person and agency or instrumentality of a foreign
4 state designated as a critical cyber threat actor
5 under subsection (a) are the following:

6 (A) With respect to an agency or instru-
7 mentality of a foreign state, the President may
8 provide for the withdrawal, limitation, or sus-
9 pension of non-humanitarian development as-
10 sistance from the United States to the foreign
11 state under chapter 1 of part I of the Foreign
12 Assistance Act of 1961 (22 U.S.C. 2151 et
13 seq.).

14 (B) With respect to an agency or instru-
15 mentality of a foreign state, the President may
16 provide for the withdrawal, limitation, or sus-
17 pension of security assistance from the United
18 States to the foreign state under part II of the
19 Foreign Assistance Act of 1961 (22 U.S.C.
20 2301 et seq.).

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

1 benefit the foreign person or agency or instru-
2 mentality of a foreign state.

3 (D) The President may direct the Overseas
4 Private Investment Corporation, the United
5 States International Development Finance Cor-
6 poration, or any other Federal agency not to
7 approve the issuance of any (or to issue a speci-
8 fied number of) guarantees, insurance, exten-
9 sions of credit, or participations in the exten-
10 sion of credit that would benefit the foreign
11 person or agency or instrumentality of a foreign
12 state.

13 (E) With respect to a foreign person, the
14 President may, pursuant to such regulations or
15 guidelines as the President may prescribe, pro-
16 hibit any United States person from investing
17 in or purchasing significant amounts of equity
18 or debt instruments of that would benefit the
19 foreign person.

20 (F) The President may, pursuant to proce-
21 dures the President shall prescribe, which shall
22 include the opportunity to appeal actions under
23 this subparagraph, prohibit any Federal agency
24 from procuring, or entering into any contract
25 for the procurement of, any goods, technology,

1 or services, or classes of goods, technology, or
2 services, from the foreign person or agency or
3 instrumentality of a foreign state.

4 (G) The President may order the heads of
5 the appropriate Federal agencies to not issue
6 any (or to issue a specified number of) specific
7 licenses, and to not grant any other specific au-
8 thority (or to grant a specified number of au-
9 thorities), to export any goods or technology to
10 the foreign person or agency or instrumentality
11 of a foreign state under—

12 (i) the Export Control Reform Act of
13 2018 (50 U.S.C. 4801 et seq.);

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

16 (iii) the Atomic Energy Act of 1954
17 (42 U.S.C. 2011 et seq.); or

18 (iv) any other statute that requires
19 the prior review and approval of the
20 United States Government as a condition
21 for the export or reexport of goods or serv-
22 ices.

23 (H) With respect to a foreign person, the
24 President may exercise all of the powers grant-
25 ed to the President under the International

1 Emergency Economic Powers Act (50 U.S.C.
2 1701 et seq.) (except that the requirements of
3 section 202 of such Act (50 U.S.C. 1701) shall
4 not apply) to the extent necessary to block and
5 prohibit all transactions in property and inter-
6 ests in property of the foreign person if such
7 property and interests in property are in the
8 United States, come within the United States,
9 or are or come within the possession or control
10 of a United States person.

11 (I) With respect to a foreign person, the
12 President may, pursuant to such regulations as
13 the President may prescribe, prohibit any trans-
14 fers of credit or payments between one or more
15 financial institutions or by, through, or to any
16 financial institution, to the extent that such
17 transfers or payments are subject to the juris-
18 diction of the United States and involve any in-
19 terest of the foreign person.

20 (c) TRAVEL-RELATED SANCTIONS.—

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

24 (A) inadmissible to the United States;

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

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

7 (2) CURRENT VISAS REVOKED.—

8 (A) IN GENERAL.—The issuing consular
9 officer, the Secretary of State, or the Secretary
10 of Homeland Security (or a designee of either
11 such Secretary) shall revoke any visa or other
12 entry documentation issued to a foreign person
13 who is a designated as a critical cyber threat
14 actor under subsection (a) regardless of when
15 issued.

16 (B) EFFECT.—A revocation under sub-
17 paragraph (A) with respect to a foreign person
18 shall take effect immediately and shall auto-
19 matically cancel any other valid visa or entry
20 documentation that is in the possession of the
21 foreign person.

22 (d) ADDITIONAL SANCTIONS WITH RESPECT TO
23 FOREIGN STATES.—

24 (1) IN GENERAL.—The President may impose
25 any of the sanctions described in paragraph (2) with

1 respect to the government of a foreign state that the
2 President has determined aided, abetted, or directed
3 a foreign person or agency or instrumentality of a
4 foreign state that is designated as a critical cyber
5 threat actor under subsection (a).

6 (2) SANCTIONS DESCRIBED.—The sanctions de-
7 scribed in this paragraph with respect to the govern-
8 ment of a foreign state are the following:

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

16 (B) The President may provide for the
17 withdrawal, limitation, or suspension of security
18 assistance from the United States to the foreign
19 state under part II of the Foreign Assistance
20 Act of 1961 (22 U.S.C. 2301 et seq.).

21 (C) The President may direct the United
22 States executive director to each international
23 financial institution to use the voice and vote of
24 the United States to oppose the extension by

1 such institution of any loan or financial assist-
2 ance to the government of the foreign state.

3 (D) No item on the United States Muni-
4 tions List under section 38(a)(1) of the Arms
5 Export Control Act (22 U.S.C. 2778(a)(1)) or
6 the Commerce Control List set forth in Supple-
7 ment No. 1 to part 774 of the Export Adminis-
8 tration Regulations under subchapter C of
9 chapter VII of title 15, Code of Federal Regula-
10 tions (or any successor list established pursuant
11 to section 1754(a)(1) of the Export Control Re-
12 form Act of 2018 (50 U.S.C. 4813(a)(1))), may
13 be exported to the government of the foreign
14 state.

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

19 (f) PENALTIES.—The penalties provided for in sub-
20 sections (b) and (c) of section 206 of the International
21 Emergency Economic Powers Act (50 U.S.C. 1705) shall
22 apply to a person that violates, attempts to violate, con-
23 spires to violate, or causes a violation of subsection
24 (b)(2)(H) or regulations prescribed under subsection
25 (b)(2)(H) to the same extent that such penalties apply to

1 a person that commits an unlawful act described in sub-
2 section (a) of such section 206.

3 (g) COORDINATION.—To the extent practicable—

4 (1) actions taken by the President pursuant to
5 this section should be coordinated with allies and
6 partners of the United States; and

7 (2) the Secretary of State should work with al-
8 lies and partners of the United States, on a vol-
9 untary basis, to lead an international diplomatic ini-
10 tiative to—

11 (A) deter critical cyber threat actors and
12 state-sponsored cyber activities; and

13 (B) provide mutual support to such allies
14 and partners participating in such initiative to
15 respond to such state-sponsored cyber activities.

16 (h) EXEMPTIONS, WAIVERS, AND REMOVALS OF
17 SANCTIONS AND DESIGNATIONS.—

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

21 (A) Activities subject to the reporting re-
22 quirements of title V of the National Security
23 Act of 1947 (50 U.S.C. 3091 et seq.) or to any
24 authorized intelligence activities of the United
25 States.

1 (B) Any transaction necessary to comply
2 with the Agreement regarding the Head-
3 quarters of the United Nations, signed at Lake
4 Success June 26, 1947, and entered into force
5 November 21, 1947, between the United Na-
6 tions and the United States, the Convention on
7 Consular Relations, done at Vienna April 24,
8 1963, and entered into force March 19, 1967,
9 or other applicable international obligations.

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

18 (A) Such waiver is in the national interests
19 of the United States.

20 (B) Such waiver will further the enforce-
21 ment of this section or is for an important law
22 enforcement purpose.

23 (C) Such waiver is for an important hu-
24 manitarian purpose.

1 (3) REMOVALS OF SANCTIONS AND DESIGNA-
2 TIONS.—The President may prescribe rules and reg-
3 ulations for the removal of sanctions under sub-
4 sections (b), (c), and (d) and the removal of designa-
5 tions under subsection (a) if the President deter-
6 mines that a foreign person, agency or instrumen-
7 tality of a foreign state, or government of a foreign
8 state subject to such sanctions or designation, as the
9 case may be, has verifiably ceased its participation
10 in any of the conduct with respect to which such for-
11 eign person, agency or instrumentality of a foreign
12 state, or government of a foreign state was subject
13 to such sanctions or designation, as the case may be,
14 under this section, and has given assurances that
15 such foreign person, agency or instrumentality of a
16 foreign state, or government of a foreign state, as
17 the case may be, will no longer participate in such
18 conduct.

19 (4) EXCEPTION TO COMPLY WITH UNITED NA-
20 TIONS HEADQUARTERS AGREEMENT.—Sanctions
21 under subsection (c) shall not apply to a foreign per-
22 son if admitting such foreign person into the United
23 States is necessary to permit the United States to
24 comply with the Agreement regarding the Head-
25 quarters of the United Nations, signed at Lake Suc-

1 cess June 26, 1947, and entered into force Novem-
2 ber 21, 1947, between the United Nations and the
3 United States, or other applicable international obli-
4 gations.

5 (i) RULE OF CONSTRUCTION.—Nothing in this sec-
6 tion may be construed to limit the authority of the Presi-
7 dent under the International Emergency Economic Powers
8 Act (50 U.S.C. 1701 et seq.) or any other provision of
9 law to impose sanctions to address critical cyber threat
10 actors and malicious state-sponsored cyber activities.

11 (j) DEFINITIONS.—In this section:

12 (1) ADMITTED; ALIEN.—The terms “admitted”
13 and “alien” have the meanings given those terms in
14 section 101 of the Immigration and Nationality Act
15 (8 U.S.C. 1101).

16 (2) AGENCY OR INSTRUMENTALITY OF A FOR-
17 EIGN STATE.—The term “agency or instrumentality
18 of a foreign state” has the meaning given that term
19 in section 1603(b) of title 28, United States Code.

20 (3) APPROPRIATE CONGRESSIONAL COMMIT-
21 TEES.—The term “appropriate congressional com-
22 mittees” means—

23 (A) the Committee on Foreign Relations,
24 the Committee on Banking, Housing, and
25 Urban Affairs, the Committee on the Judiciary,

1 and the Committee on Homeland Security and
2 Governmental Affairs of the Senate; and

3 (B) the Committee on Foreign Affairs, the
4 Committee on Financial Services, the Com-
5 mittee on the Judiciary, the Committee on
6 Oversight and Reform, and the Committee on
7 Homeland Security of the House of Representa-
8 tives.

9 (4) CRITICAL INFRASTRUCTURE SECTOR.—The
10 term “critical infrastructure sector” means any of
11 the designated critical infrastructure sectors identi-
12 fied in the Presidential Policy Directive entitled
13 “Critical Infrastructure Security and Resilience”,
14 numbered 21, and dated February 12, 2013.

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

18 (6) FOREIGN STATE.—The term “foreign state”
19 has the meaning given that term in section 1603(a)
20 of title 28, United States Code.

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

1 (8) MISAPPROPRIATION.—The term “misappro-
2 piation” means taking or obtaining by improper
3 means, without permission or consent, or under false
4 pretenses.

5 (9) STATE-SPONSORED CYBER ACTIVITIES.—
6 The term “state-sponsored cyber activities” means
7 any malicious cyber-enabled activities that—

8 (A) are carried out by a government of a
9 foreign state or an agency or instrumentality of
10 a foreign state; or

11 (B) are carried out by a foreign person
12 that is aided, abetted, or directed by a govern-
13 ment of a foreign state or an agency or instru-
14 mentality of a foreign state.

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

17 (A) a United States citizen or an alien law-
18 fully admitted for permanent residence to the
19 United States; or

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

1 **SEC. 4. SENSE OF CONGRESS ON IMPLEMENTATION OF CY-**
2 **BERSECURITY COOPERATION BETWEEN THE**
3 **UNITED STATES AND NATIONS IN THE INDO-**
4 **PACIFIC REGION.**

5 It is the sense of Congress that the President is en-
6 couraged to fully implement robust cybersecurity coopera-
7 tion between the United States and nations in the Indo-
8 Pacific region as described in section 215 of the Asia Re-
9 assurance Initiative Act of 2018 (Public Law 115–409).

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