AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5208 OFFERED BY MR. POE OF TEXAS

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''North Korea State Sponsor of Terrorism Designation Act of 2016''.

SEC. 2. REPORT ON DESIGNATION OF GOVERNMENT OF NORTH KOREA AS A STATE SPONSOR OF TERRORISM.

(a) FINDINGS.—Congress finds the following:

(1) The Government of North Korea was designated a state sponsor of terrorism on January 20, 1988, for repeatedly providing support of acts of international terrorism.

(2) However, on October 11, 2008, North Korea's designation as a state sponsor of terrorism was rescinded, following commitments by the Government of North Korea to completely, verifiably, and irreversibly dismantle its nuclear weapons program, yet North Korea has failed to live up to these commitments and is continuing to produce ever greater

quantities of fissile material for nuclear weapons and periodically conduct testing of nuclear explosive devices.

(3) Consequences of a state sponsors of terrorism designation include a ban on arms-related exports and sales; restrictions on exports of dual-use items; restrictions on foreign assistance; financial sanctions against transactions with the designated government; imposition of miscellaneous trade and other restrictions; and potential liability in United States courts for acts that fall within the terrorism exception of the Foreign Sovereign Immunities Act. The criminal code also prohibits financial transactions by United States persons with any government designated as a state sponsor of terrorism. Issuers of securities must disclose in their public filings any investments in states whose governments sponsor terrorism. Finally, a designation requires United States representatives to oppose any benefits or extensions of credit to any designated government by international financial institutions.

(4) On October 22, 2015, Ambassador Sung Kim, Special Representative for North Korea Policy with the U.S. Department of State, testified before the House Foreign Affairs Subcommittee on Ter-

rorism, Nonproliferation, and Trade that North Korea's ''conduct poses a growing threat to the United States, our friends in the region, and the global nonproliferation regime'' and Ms. Hilary Batjer Johnson, Deputy Coordinator for Homeland Security, Screening, and Designations with the U.S. Department of State noted that ''weapons transfers that violate nonproliferation or missile control regimes could be a relevant factor for consideration, depending on the circumstances, consistent with the statutory criteria for designation as a state sponsor of terrorism''.

(5) The Government of North Korea has harbored members of the Japanese Red Army since a 1970 hijacking and continues to harbor the surviving hijackers to this day.

(6) On July 16, 2010, in the case of *Calderon-Cardona* v. *Democratic People's Republic of Korea* (case number 08–01367), the United States District Court for the District of Puerto Rico found that the Government of North Korea provided material support to the Japanese Red Army, designated as a foreign terrorist organization between 1997 and 2001, in furtherance of a 1972 terrorist attack at Lod Air-

port, Israel that killed 26 people, including 17 Americans.

(7) On April 18, 2013, Michael Flynn, the Director of the Defense Intelligence Agency testified that Syria's liquid-propellant missile program depends on essential foreign equipment and assistance, primarily from North Korean entities. Further statements by United States Government officials report that North Korea helped Syria build the Al Kibar nuclear reactor, which Israel reportedly destroyed in 2007, and could have been used to produce plutonium for nuclear weapons.

(8) Of the three foreign governments currently designated as state sponsors of terrorism, the governments of Iran and Syria are designated as state sponsors of terrorism for their support of Hamas and Hezbollah. The Department of State's 2005, 2007, 2010, 2012, and 2013 ''Country Reports'' all cited Iran and Syria for supplying weapons to Hezbollah through Syrian territory, and most of them also cited Iran's training of Hezbollah.

(9) In the case of *Chaim Kaplan* v. *Hezbollah* (case number 09–646), a United States district court found in 2014 that North Korea materially supported terrorist attacks by Hezbollah, a des-

ignated foreign terrorist organization, against Israel in 2006.

(10) In December 2009, a North Korean arms shipment aboard an Ilyushin Il–76 cargo plane was discovered and seized by authorities of the Government of Thailand. The cargo, which was marked as consisting of oil-drilling equipment, contained 35 tons of rockets, surface-to-air missiles (MANPADS), explosives, rocket-propelled grenades, and other weaponry. A similar shipment was impounded in the United Arab Emirates a few months earlier in July 2009. A third shipment was intercepted by the Israeli government in the Eastern Mediterranean in November 2009. According to published media reports, United States and Israeli intelligence agencies concluded that the shipments were destined for Iranian-backed terrorists, including Hezbollah, Hamas, and the Quds Force. Another large quantity of shipments to both Hamas and Hezbollah, is believed to have been transferred unnoticed.

(11) In June 2010, Major Kim Myong-ho and Major Dong Myong-gwan of North Korea's Reconnaissance General Bureau pled guilty in a South Korean court to attempting to assassinate Hwang Jang-yop, a North Korean dissident in exile, on the

orders of Lieutenant General Kim Yong-chol, the head of North Korea's Reconnaissance General Bureau. The court sentenced each defendant to 10 years in prison.

(12) In June of 2010, Major Kim Myong-ho and Major Dong Myong-gwan of North Korea's Reconnaissance General Bureau pled guilty in a South Korean court to attempting to assassinate Hwang Jang-yop, a North Korean dissident in exile, on the orders of Lieutenant General Kim Yong-chol, the head of North Korea's Reconnaissance General Bureau. The court sentenced each defendant to 10 years in prison.

(13) In July 2014, press reports indicated that militants from Hamas, a designated foreign terrorist organization, attempted to negotiate a new arms deal with North Korea for missiles and communications equipment that would have allowed the militants to maintain their armed terrorist attacks against Israel. Security officials announced that the deal between Hamas and North Korea was worth hundreds of thousands of dollars and was handled by a Lebanese-based trading company.

(14) On November 24, 2014, a hacker group that identified itself as the ''Guardians of Peace''

leaked confidential data from the film studio Sony Pictures Entertainment. The data included personal information about Sony Pictures employees, e-mails between employees, information about executive salaries at the company, copies of then-unreleased Sony films, and other information.

(15) On December 16, 2015, the ''Guardians of Peace'' sent a message to Sony Pictures, to ''clearly show it to you at the very time and places 'The Interview' be shown . . . how bitter fate those who seek fun in terror should be doomed to''. The message further stated, ''The world will be full of fear'', ''[. . .] Remember the 11th of September 2001'', and ''We recommend you to keep yourself distant from the places at that time.''. The threat caused theaters across the United States to cancel showings of ''The Interview'' and caused Sony Pictures to cancel the release of the film in theaters.

(16) On December 19, 2015, the Federal Bureau of Investigation concluded that North Korea was responsible for the cyber attack on Sony Pictures Entertainment and the threat against the movie theaters, and that the ''Guardians of Peace'' was a unit of North Korea's Reconnaissance General Bureau, its foreign intelligence service.

(17) In March 2015, the South Korean government publicly accused North Korea of responsibility for a December 2014 cyber attack against multiple nuclear power plants in South Korea, stated that the attacks were intended to cause a malfunction at the plants' reactors, and described the attacks as acts of ''cyber-terror targeting our country''.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Government of North Korea likely meets the criteria for designation as a state sponsor of terrorism and, if so, should be so designated. North Korea has failed to live up to its 2008 commitments to verifiably dismantle its nuclear weapons program and appears to have continued to support acts of international terrorism after its removal from the list of state sponsors of terrorism in October 2008.

(c) REPORT; DETERMINATION OR JUSTIFICATION.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report that finds whether—

(A)(i) with respect to each of the acts described in paragraphs (5) through (16) or subsection (a), the Government of North Korea, including any agents or instrumentalities of the

Government of North Korea, directly or indirectly, committed, conspired to commit, attempted, aided, or abetted such act; and

(ii) since October 2008, the Government of North Korea, including any agents or instrumentalities of the Government of North Korea, directly or indirectly, committed, conspired to commit, attempted, aided, or abetted any other act of international terrorism, including through—

(I) support for any organization designated as a foreign terrorist organization, any entity designated pursuant to Executive Order 13224, or any entity that otherwise supports acts of international terrorism;

(II) direct sponsorship of acts of international terrorism; or

(III) the provision of armaments or other controlled goods, services, or technology to any country the government of which is designated as a state sponsor of terrorism; and

(B) such act constitutes support for international terrorism.

(2) DETERMINATION OR JUSTIFICATION.—If the Secretary of State finds that the Government of North Korea, including any agents or instrumentalities of the Government of North Korea, directly or indirectly, committed, conspired to commit, attempted, aided, or abetted any act described in clause (i) or (ii) of paragraph (1)(A) and such act constitutes support for international terrorism under paragraph (1)(B), the Secretary shall make a determination of whether, based on the information in the report and all other relevant sources, the Government of North Korea meets the criteria for designation as a state sponsor or terrorism, and in the event the Secretary does not decide to designate the Government of North Korea a state sponsor of terrorism, the Secretary shall provide a detailed justification for why the Government of North Korea should not be designated a state sponsor of terrorism.

(d) FORM.—The report required by subsection (c)(1) shall be submitted in unclassified form, but may include a classified annex, if appropriate.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committee on Foreign Relations of the Senate; and

(B) the Committee on Foreign Affairs of the House of Representatives.

(2) FOREIGN TERRORIST ORGANIZATION.—The term ''foreign terrorist organization'' means an organization designated by the Secretary of State as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

(3) NORTH KOREA.—The term ''North Korea'' means the Democratic People's Republic of Korea.

(4) STATE SPONSOR OF TERRORISM.—The term ''state sponsor of terrorism'' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 4605(j)) (as in effect pursuant to the International Emergency Economic Powers Act), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that

has repeatedly provided support for acts of international terrorism.

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