

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8924
OFFERED BY MRS. KIM OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Protecting American
3 Innovation and Development Act of 2024” or the “PAID
4 Act of 2024”.

5 SEC. 2. STATEMENT OF POLICY.

6 Section 1752(2) of the Export Control Reform Act
7 of 2018 (50 U.S.C. 4811(2)) is amended by inserting after
8 subparagraph (G) the following:

9 “(H) To ensure the continued strength
10 and leadership of the United States in the re-
11 search and development of critical and emerg-
12 ing technologies.”.

1 **SEC. 3. PUBLIC TRANSPARENCY REGARDING FOREIGN AD-**
2 **VERSARY ENTITIES USING INTELLECTUAL**
3 **PROPERTY RELATED TO CRITICAL OR**
4 **EMERGING TECHNOLOGY WITHOUT A LI-**
5 **CENSE.**

6 (a) IN GENERAL.—Part I of the Export Control Re-
7 form Act of 2018 (50 U.S.C. 4811 et seq.) is amended
8 by inserting after section 1758 the following:

9 **“SEC. 1758A. PUBLIC TRANSPARENCY REGARDING FOR-**
10 **EIGN ADVERSARY ENTITIES USING INTEL-**
11 **LECTUAL PROPERTY RELATED TO CRITICAL**
12 **OR EMERGING TECHNOLOGY WITHOUT A LI-**
13 **CENSE.**

14 “(a) IDENTIFICATION.—

15 “(1) IN GENERAL.—The Secretary shall publish
16 in the Federal Register a notice that identifies a for-
17 eign adversary entity if a majority of the members
18 of the End-User Review Committee determines, in
19 consultation with other Federal agencies as appro-
20 priate and in accordance with applicable Federal
21 patent and trade secret laws, that the foreign adver-
22 sary entity is knowingly using a covered patented in-
23 vention, or is knowingly using or has knowingly dis-
24 closed a covered trade secret, without a license,
25 and—

1 “(A) in the case of a covered patented in-
2 vention, the foreign adversary entity had actual
3 knowledge of the relevant patent, which is en-
4 forceable and not invalid, prior to or during its
5 use of the covered patented invention; and

6 “(B) acquired the covered patented inven-
7 tion or covered trade secret through improper
8 means, including—

9 “(i) theft;

10 “(ii) bribery;

11 “(iii) misrepresentation;

12 “(iv) breach of, or an inducement of a
13 breach of, a duty to maintain secrecy;

14 “(v) espionage; or

15 “(vi) knowingly receiving the covered
16 patented invention or covered trade secret
17 from a person who the foreign adversary
18 entity knows, or has reason to know, com-
19 mitted one of the acts described in clause
20 (i), (ii), (iii), (iv), or (v).

21 “(2) IDENTIFICATION BY PETITION.—

22 “(A) IN GENERAL.—A United States per-
23 son may submit a petition to the End-User Re-
24 view Committee requesting the Committee to
25 make a determination in accordance with the

1 requirements of paragraph (1) for purposes of
2 the Secretary publishing in the Federal Reg-
3 ister a notice that identifies a foreign adversary
4 entity in accordance with the requirements of
5 paragraph (1) if the United States person—

6 “(i) has reason to believe that a for-
7 eign entity is using a covered patented in-
8 vention or covered trade secret without a
9 license;

10 “(ii) is the owner of the covered pat-
11 ented invention or covered trade secret;
12 and

13 “(iii) is not a party to a proceeding at
14 the U.S. Patent and Trademark Office in-
15 volving a patent that is a basis, in whole
16 or in part, of its petition to the Committee.

17 “(B) DEADLINE.—After the End-User Re-
18 view Committee receives a petition submitted
19 under subparagraph (A), the Committee shall
20 make a determination with respect to the peti-
21 tion in accordance with the requirements of
22 paragraph (1) not later than 90 days after the
23 date on which the Committee receives the peti-
24 tion.

25 “(3) REMOVAL.—

1 “(A) IN GENERAL.—The Secretary shall
2 publish in the Federal Register a subsequent
3 notice with respect to a foreign adversary entity
4 identified in the Federal Register under the
5 process described in this section if the Sec-
6 retary, in consultation with the other members
7 of the End-User Review Committee, determines
8 that there is prima facie evidence that the for-
9 eign adversary entity—

10 “(i) is no longer using a covered pat-
11 ented invention or covered trade secret
12 without a license; or

13 “(ii) is using a covered patented in-
14 vention or covered trade secret without a
15 license, but—

16 “(I) has entered into an agree-
17 ment for such use with the owner of
18 the covered patented invention or cov-
19 ered trade secret; or

20 “(II) has entered into binding ar-
21 bitration with the owner of the cov-
22 ered patented invention or covered
23 trade secret to set the terms for such
24 use.

1 “(B) REMOVAL BY PETITION.—If a foreign
2 adversary entity identified in the Federal Reg-
3 ister under the process described in this section
4 for using a covered patented invention or cov-
5 ered trade secret without a license, or the owner
6 of the covered patented invention or covered
7 trade secret, believes that the foreign adversary
8 entity meets the conditions described in clause
9 (i) or (ii) of subparagraph (A), the foreign ad-
10 versary entity or the owner of the covered pat-
11 ented invention or covered secret may petition
12 the Secretary to have the Secretary publish in
13 the Federal Register a subsequent notice with
14 respect to the foreign adversary entity.

15 “(b) REPORT REQUIRED.—Upon request from any of
16 the appropriate congressional committees, the Secretary
17 shall submit to the appropriate congressional committees
18 a report that includes a list of all foreign adversary enti-
19 ties identified in the Federal Register under the process
20 described in this section, including a written explanation
21 of the reasons therefor.

22 “(c) DEFINITION OF CRITICAL OR EMERGING TECH-
23 NOLOGY.—In this section, the term ‘critical or emerging
24 technology’ includes any technology defined by the Under
25 Secretary of Defense for Research and Engineering as a

1 ‘critical technology area’ as soon as practicable on or after
2 the date of the enactment of this section.

3 “(d) OTHER DEFINITIONS.—In this section:

4 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term ‘appropriate congressional com-
6 mittees’ means—

7 “(A) the Committee on Banking, Housing,
8 and Urban Affairs and the Committee on the
9 Judiciary of the Senate; and

10 “(B) the Committee on Foreign Affairs,
11 the Committee on the Judiciary, and the Select
12 Committee on the Strategic Competition Be-
13 tween the United States and the Chinese Com-
14 munist Party of the House of Representatives.

15 “(2) COVERED PATENTED INVENTION.—The
16 term ‘covered patented invention’ means an inven-
17 tion—

18 “(A) directed to critical or emerging tech-
19 nology; and

20 “(B) protected by a utility patent—

21 “(i) issued under title 35, United
22 States Code; and

23 “(ii) with respect to which the rightful
24 legal or equitable title to, or exclusive li-

1 cense in such patent is reposed in a United
2 States person.

3 “(3) COVERED TRADE SECRET.—The term ‘cov-
4 ered trade secret’ means a trade secret (as such
5 term is defined in section 1839 of title 18, United
6 States Code)—

7 “(A) directed to critical or emerging tech-
8 nology; and

9 “(B) with respect to which the rightful
10 legal or equitable title to, or exclusive license in,
11 the trade secret is reposed in a United States
12 person.

13 “(4) END-USER REVIEW COMMITTEE.—The
14 term ‘End-User Review Committee’ means the End-
15 User Review Committee described in Supplement
16 No. 9 to part 748(1) of the Export Administration
17 Regulations, or any successor regulation, as making
18 decisions related to export controls.

19 “(5) FOREIGN ADVERSARY.—The term ‘foreign
20 adversary’ means—

21 “(A) the People’s Republic of China (in-
22 cluding the Special Administrative Regions of
23 China, including Hong Kong and Macau);

24 “(B) the Russian Federation;

25 “(C) the Republic of Cuba;

1 “(D) the Democratic People’s Republic of
2 Korea;

3 “(E) the Islamic Republic of Iran; and

4 “(F) the Venezuelan regime under the
5 leadership of Nicolas Maduro.

6 “(6) FOREIGN ADVERSARY ENTITY.—The term
7 ‘foreign adversary entity’—

8 “(A) means—

9 “(i) an individual who is a citizen or
10 national (as defined in section 101(a) of
11 the Immigration and Nationality Act (8
12 U.S.C. 1101(a))) of a foreign adversary;

13 “(ii) an entity that is headquartered
14 in, or organized under the laws of, or has
15 its principal place of business in a foreign
16 adversary;

17 “(iii) an entity subject to the control
18 (as that term is defined in section 800.208
19 of subpart B of chapter VIII of title 31,
20 Code of Federal Regulations, or any suc-
21 cessor regulations) of any entity or com-
22 bination of entities described in clause (i)
23 or (ii); or

1 “(iv) any successor or subsidiary of
2 any entity described in clause (i), (ii), or
3 (iii); but

4 “(B) does not include any entity with re-
5 spect to which—

6 “(i) a majority of the equity interest
7 in the entity is owned by nationals of the
8 United States and nationals of such coun-
9 tries (other than a foreign adversary) as
10 are identified for purposes of this subpara-
11 graph pursuant to regulations prescribed
12 by the Secretary; or

13 “(ii) its ultimate parent entity is an
14 entity organized under the laws of, and
15 headquartered in, the United States or its
16 States, territories, or subdivisions.

17 “(7) OWNER OF THE COVERED PATENTED IN-
18 VENTION OR COVERED TRADE SECRET.—The term
19 ‘owner of the covered patented invention or covered
20 trade secret’ means—

21 “(A) in the case of a covered patented in-
22 vention, the person or entity in whom or in
23 which rightful legal or equitable title to, or ex-
24 clusive license in, the applicable patent is re-
25 posed; and

1 “(B) in the case of a covered trade secret,
2 the person or entity in whom or in which right-
3 ful legal or equitable title to, or exclusive license
4 in, the applicable trade secret is reposed.”.

5 (b) CLERICAL AMENDMENT.—The table of contents
6 in section 2(b) of the John S. McCain National Defense
7 Authorization Act for Fiscal Year 2019 and the table of
8 contents at the beginning of title XVII of division A of
9 such Act are each amended by inserting after the item
10 relating to section 1758 the following new item:

“Sec. 1758A. Public transparency regarding foreign adversary entities using intellectual property related to critical or emerging technology without a license.”.

