



(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To provide a clarification of non-applicability for regulation and prohibition relating to sensitive personal data under International Emergency Economic Powers Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. McCaul introduced the following bill; which was referred to the Committee on _____

A BILL

To provide a clarification of non-applicability for regulation and prohibition relating to sensitive personal data under International Emergency Economic Powers Act, 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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Deterring America’s Technological Adversaries Act” or
6 “DATA Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Authorization of appropriations.
- Sec. 4. Severability.
- Sec. 5. Definitions.

TITLE I—CLARIFICATION OF NON-APPLICABILITY FOR REGULATION AND PROHIBITION RELATING TO SENSITIVE PERSONAL DATA UNDER INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

- Sec. 101. Clarification.
- Sec. 102. Directive.

TITLE II—IMPOSITION OF SANCTIONS ON CERTAIN TRANSACTIONS RELATING TO CONNECTED SOFTWARE APPLICATIONS

- Sec. 201. Imposition of sanctions.
- Sec. 202. Sanction described.
- Sec. 203. Sunset.

TITLE III—SPECIFIC DETERMINATIONS WITH RESPECT TO THE IMPOSITION OF SANCTIONS

- Sec. 301. Determination relating to Bytedance, Ltd., TikTok, and related entities.
- Sec. 302. Requests by appropriate congressional committees.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) On December 2, 2022, the Director of the
6 Federal Bureau of Investigation, Christopher Wray,
7 stated, “We. . .do have national security concerns
8 about the app [TikTok]. Its parent company is controlled by the Chinese government. And it gives
9 them the potential to leverage the app in ways that
10 I think should concern us. . .One, it gives them the
11 ability to control the recommendation algorithm
12 which allows them to manipulate content and if they
13

1 want to, to use it for influence operations which are
2 a lot more worrisome in the hands of the Chinese
3 Communist Party than whether or not you're steer-
4 ing somebody as an influencer to one product or an-
5 other. They also have the ability to collect data
6 through it on users which can be used for traditional
7 espionage operations, for example. They also have
8 the ability on it to get access, they have essentially
9 access to the software to devices. So you're talking
10 about millions of devices and that gives them the
11 ability to engage in different kinds of malicious
12 cyber activity through that. And so all of these
13 things are in the hands of a government that doesn't
14 share our values and that has a mission that's very
15 much at odds with what's in the best interest of the
16 United States that that should concern us."

17 (2) On December 3, 2022, the Director of Na-
18 tional Intelligence, Avril Haines, "It is extraordinary
19 the degree to which China, in particular, but they're
20 not the only ones, obviously, are developing just
21 frameworks for collecting foreign data and pulling it
22 in and their capacity to then turn that around and
23 use it to target audiences for information campaigns
24 or for other things, but also to have it for the future

1 so that they can use it for a variety of means that
2 they're interested in."

3 (3) On December 16, 2022, the Director of
4 Central Intelligence, Bill Burns, stated, "I think it's
5 a genuine concern. . .for the U.S. government, in
6 the sense that, because the parent company of
7 TikTok is a Chinese company, the Chinese govern-
8 ment is able to insist upon extracting the private
9 data of a lot of TikTok users in this country, and
10 also to shape the content of what goes on to TikTok
11 as well to suit the interests of the Chinese leader-
12 ship. . .What I would underscore, though, is that
13 it's genuinely troubling to see what the Chinese gov-
14 ernment could do to manipulate TikTok."

15 (4) On December 23, 2022, both chambers of
16 Congress passed a bipartisan spending bill that in-
17 cluded a ban on using TikTok from government de-
18 vices.

19 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

20 No additional amounts are authorized to be made
21 available to carry out this Act.

22 **SEC. 4. SEVERABILITY.**

23 If any provision of this Act or its application to any
24 person or circumstance is held invalid, the invalidity does
25 not affect other provisions or applications of this section

1 that can be given effect without the invalid provision or
2 application, and to this end the provisions of this Act are
3 severable.

4 **SEC. 5. DEFINITIONS.**

5 In this Act:

6 (1) **AGENCY OR INSTRUMENTALITY OF A FOR-**
7 **EIGN STATE.**—The term “agency or instrumentality
8 of a foreign state” has the meaning given such term
9 under section 1603(b) of title 28, United States
10 Code.

11 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
12 **TEES.**—The term “appropriate congressional com-
13 mittees” means—

14 (A) the Committee on Foreign Affairs,
15 Committee on Ways and Means, and the Com-
16 mittee on Financial Services of the House of
17 Representatives; and

18 (B) the Committee on Foreign Relations
19 and the Committee on Banking, Housing, and
20 Urban Affairs of the Senate.

21 (3) **CHINA.**—The term “China” means—

22 (A) when used in the geographic sense, the
23 country of the People’s Republic of China; and

24 (B) otherwise, the Government of the
25 country of the People’s Republic of China, in-

1 cluding any entity acting on behalf of, or the
2 benefit of—

3 (i) the country of the People’s Repub-
4 lic of China; or

5 (ii) the Government of the country of
6 the People’s Republic of China.

7 (4) CONNECTED SOFTWARE APPLICATION.—

8 The term “connected software application” has the
9 meaning given such term in Executive Order 14034
10 (86 Fed. Reg. 31423; relating to protecting Ameri-
11 cans’ sensitive data from foreign adversaries).

12 (5) ELECTION INTERFERENCE IN OR AGAINST A
13 FOREIGN COUNTRY THAT IS A TREATY ALLY OF THE
14 UNITED STATES OR A DEMOCRATIC OR EMERGING
15 DEMOCRATIC PARTNER OF THE UNITED STATES.—

16 The term “election interference in or against a for-
17 eign country that is a treaty ally of the United
18 States or a democratic or emerging democratic part-
19 ner of the United States” means actions to engage
20 in, directly or indirectly, activities originating from,
21 or directed by, persons located, in whole or in sub-
22 stantial part, outside the territory of a treaty ally of
23 the United States or a democratic or emerging
24 democratic partner of the United States that have
25 the purpose or effect of tampering with, altering, un-

1 lawfully accessing, or causing a misappropriation of
2 information with the purpose or effect of interfering
3 with or undermining election processes or institu-
4 tions.

5 (6) ELECTION INTERFERENCE IN OR AGAINST
6 THE UNITED STATES.—The term “election inter-
7 ference in or against the United States” includes ac-
8 tions to engage in, directly or indirectly, activities
9 originating from, or directed by persons located, in
10 whole or in substantial part, outside the United
11 States that—

12 (A) have the purpose or effect of tam-
13 pering with, altering, unlawfully accessing, or
14 causing a misappropriation of information with
15 the purpose or effect of undermining election
16 processes or institutions;

17 (B) deny access, block, degrade, or alter
18 election and campaign infrastructure, or related
19 systems or data related to political parties, can-
20 didates in elections for public office, the admin-
21 istration of elections for public office, or any
22 public election activity; or

23 (C) consist of the making of contributions
24 or donations, or any other activity prohibited
25 under section 319 of the Federal Election Cam-

1 paign Act of 1971 (52 U.S.C. 30121), with the
2 purpose or effect of undermining election proc-
3 esses or institutions.

4 (7) FOREIGN PERSON.—The term “foreign per-
5 son”—

6 (A) means a person that is not a United
7 States person; and

8 (B) includes a nonresident alien individual,
9 foreign corporation, foreign partnership, foreign
10 trust, foreign estate.

11 (8) KNOWINGLY.—The term “knowingly”, with
12 respect to conduct, a circumstance, or a result,
13 means that a person has actual knowledge, or should
14 have known, of the conduct, the circumstance, or the
15 result.

16 (9) SENSITIVE PERSONAL DATA.—The term
17 “sensitive personal data” has the meaning given
18 such term in section 7.2 of title 15, Code of Federal
19 Regulations (or any successor regulation).

20 (10) TREATY ALLY OF THE UNITED STATES.—
21 The term “treaty ally of the United States” means
22 a foreign country that is a party to any of the fol-
23 lowing:

24 (A) The North Atlantic Treaty, signed at
25 Washington, April 4, 1949.

1 (B) The Security Treaty Between Aus-
2 tralia, New Zealand, and the United States of
3 America, signed at San Francisco, September
4 1, 1951.

5 (C) The Mutual Defense Treaty Between
6 the United States of America and the Republic
7 of the Philippines, signed at Washington, Au-
8 gust 30, 1951.

9 (D) The Southeast Asia Collective Defense
10 Treaty, signed at Manilla, September 8, 1954.

11 (E) The Treaty of Mutual Cooperation and
12 Security Between the United States of America
13 and Japan, signed at Washington, January 19,
14 1960.

15 (F) The Mutual Defense Treaty Between
16 the United States of America and the Republic
17 of Korea, signed at Washington, October 1,
18 1953.

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

21 (A) a United States citizen;

22 (B) a permanent resident alien;

23 (C) an entity organized under the laws of
24 the United States (including foreign branches);

25 or

1 (D) any person in the United States.

2 **TITLE I—CLARIFICATION OF**
3 **NON-APPLICABILITY FOR**
4 **REGULATION AND PROHIBI-**
5 **TION RELATING TO SEN-**
6 **SITIVE PERSONAL DATA**
7 **UNDER INTERNATIONAL**
8 **EMERGENCY ECONOMIC POW-**
9 **ERS ACT**

10 **SEC. 101. CLARIFICATION.**

11 (a) **IN GENERAL.**—The importation to a country, or
12 the exportation from a country, of sensitive personal data
13 shall not constitute the importation from a country, or the
14 exportation to a country, of information or informational
15 materials for purposes of paragraph (1) or (3) of section
16 203(b) of the International Emergency Economic Powers
17 Act (50 U.S.C. 1702(b)).

18 (b) **RULE OF CONSTRUCTION.**—Nothing in sub-
19 section (a), and nothing in the International Emergency
20 Economic Powers Act, may be construed to provide for
21 the application of paragraph (1) or (3) of section 203(b)
22 of the International Emergency Economic Powers Act (50
23 U.S.C. 1702(b)) to the importation to China, or the expor-
24 tation from China, directly or indirectly, of sensitive per-
25 sonal data.

1 **SEC. 102. DIRECTIVE.**

2 Not later than 180 days after the date of the enact-
3 ment of this Act, the Secretary of the Treasury shall issue
4 a directive prohibiting United States persons from engag-
5 ing in any transaction with a person that the Secretary
6 of the Treasury determines knowingly provides or may
7 transfer sensitive personal data of persons subject to
8 United States jurisdiction to any foreign person that—

9 (1) is subject to the jurisdiction or direction of,
10 or directly or indirectly operating on behalf of,
11 China; or

12 (2) is owned by, directly or indirectly controlled
13 by, or is otherwise subject to the influence of China.

14 **TITLE II—IMPOSITION OF SANCTIONS ON CERTAIN TRANS-**
15 **ACTIONS RELATING TO CON-**
16 **NECTED SOFTWARE APPLICA-**
17 **TIONS**

19 **SEC. 201. IMPOSITION OF SANCTIONS.**

20 (a) **IN GENERAL.**—The President shall impose the
21 sanction described in section 202 with respect to any for-
22 eign person that, on or after the date of the enactment
23 of this Act, knowingly—

24 (1) operates, directs, or otherwise deals in a
25 connected software application that—

1 (A) is subject to the jurisdiction or direc-
2 tion of, or directly or indirectly operating on be-
3 half of China, or is owned by, directly or indi-
4 rectly controlled by, or otherwise subject to the
5 influence of China; and

6 (B) is reasonable believed to have facili-
7 tated or may be facilitating or contributing to
8 China's—

9 (i) military, intelligence, espionage, or
10 weapons proliferation activities;

11 (ii) censorship activities;

12 (iii) surveillance activities;

13 (iv) control or use of recommendation
14 algorithms that are capable of manipu-
15 lating content;

16 (v) malicious cyber activities; or

17 (vi) use of data to target audiences
18 for information campaigns;

19 (2) directly or indirectly orders, controls, di-
20 rects, engages in, or otherwise facilitates an act of
21 election interference against the United States;

22 (3) directly or indirectly orders, controls, di-
23 rects, engages in, or otherwise facilitates an act of
24 election interference in or against a foreign country
25 that is—

1 (A) a treaty ally of the United States; or

2 (B) a democratic or emerging democratic
3 partner of the United States;

4 (4) directly or indirectly orders, controls, di-
5 rects, engages in, or otherwise facilitates an act of
6 steering United States policy and regulatory deci-
7 sions in favor of China's strategic objectives, to the
8 detriment of the economic or national security of the
9 United States;

10 (5) knowingly facilitates a transaction or trans-
11 actions for or on behalf of a person described, or a
12 person that has engaged in the activity described, as
13 the case may be, in paragraph (1), (2), (3), or (4);

14 (6) knowingly assists, sponsors, or provides fi-
15 nancial, material, or technological support for a per-
16 son described, or a person that has engaged in the
17 activity described, as the case may be, in paragraph
18 (1), (2), (3), or (4); or

19 (7) is owned or controlled by, or has acted for
20 or on behalf of, directly or indirectly, a person de-
21 scribed, or a person that has engaged in the activity
22 described, as the case may be, in paragraph (1), (2),
23 (3), or (4).

1 (b) LIST OF FOREIGN COUNTRIES THAT ARE DEMO-
2 CRATIC OR EMERGING DEMOCRATIC PARTNERS OF THE
3 UNITED STATES.—

4 (1) IN GENERAL.—Not later than 90 days after
5 the date of the enactment of this Act, the President
6 shall submit to the appropriate congressional com-
7 mittees—

8 (A) a definition of the term “democratic or
9 emerging democratic partner of the United
10 States”; and

11 (B) a list of foreign countries that are des-
12 igned as a democratic or emerging democratic
13 partner of the United States for purposes of
14 subsection (a)(3) that includes the countries
15 listed in paragraph (2).

16 (2) INITIAL DESIGNATIONS.—Sweden, Switzer-
17 land, Israel, India, and Taiwan shall be deemed to
18 have been so designated as a democratic or emerging
19 democratic partner of the United States for pur-
20 poses of subsection (a)(3).

21 (3) UPDATES.—The President shall submit to
22 the appropriate congressional committees an up-
23 dated list under subparagraph (A) on a periodic
24 basis.

1 **SEC. 202. SANCTION DESCRIBED.**

2 (a) **IN GENERAL.**—The sanction described in this
3 section is the exercise of all powers granted to the Presi-
4 dent by the International Emergency Economic Powers
5 Act (50 U.S.C. 1701 et seq.) (except that the require-
6 ments of section 202 of such Act (50 U.S.C. 1701) shall
7 not apply) to the extent necessary to block and prohibit
8 all transactions in all property and interests in property
9 of any foreign person or an agency or instrumentality of
10 a foreign state, as the case may be, if such property and
11 interests in property are in the United States, come within
12 the United States, or are or come within the possession
13 or control of a United States person.

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

18 (c) **REGULATIONS.**—

19 (1) **IN GENERAL.**—The President shall pre-
20 scribe such regulations as may be necessary for the
21 implementation of this title.

22 (2) **PRIOR BRIEFING REQUIRED.**—Not later
23 than 10 days before the prescription of regulations
24 under paragraph (1), the President shall brief the
25 appropriate congressional committees regarding the

1 proposed regulations and the provisions of this title
2 that such regulations are implementing.

3 (d) PENALTIES.—A person that violates, attempts to
4 violate, or causes a violation of any sanction authorized
5 by this title, or any regulation, license, or order issued to
6 carry out such sanctions, shall be subject to the penalties
7 set forth in subsections (b) and (c) of section 206 of the
8 International Emergency Economic Powers Act (50
9 U.S.C. 1705) to the same extent as a person that commits
10 an unlawful act described in subsection (a) of that section.

11 (e) EXCEPTIONS.—The following activities shall not
12 be subject to the imposition of sanctions under this title:

13 (1) Any authorized intelligence, law enforce-
14 ment, or national security activities of the United
15 States.

16 (2) Any transaction necessary to comply with
17 United States obligations under the Agreement be-
18 tween the United Nations and the United States of
19 America regarding the Headquarters of the United
20 States, signed at Lake Success June 26, 1947, and
21 entered into force November 21, 1947, or the Con-
22 vention on Consular Relations, done at Vienna April
23 24, 1963, and entered into force March 19, 1967, or
24 any other United States international agreement.

1 (f) WAIVER.—The President may, on a case-by-case
2 basis and for periods not to exceed 180 days each, waive
3 the application of sanctions imposed with respect to a for-
4 eign person under this title if the President certifies to
5 the appropriate congressional committees, not later than
6 15 days before such waiver is to take effect, that the waiv-
7 er is vital to the national security interests of the United
8 States.

9 **SEC. 203. SUNSET.**

10 This title, and the authorities provided by this title,
11 shall terminate on the date that is 5 years after the date
12 of the enactment of this Act.

13 **TITLE III—SPECIFIC DETER-**
14 **MINATIONS WITH RESPECT**
15 **TO THE IMPOSITION OF SANC-**
16 **TIONS**

17 **SEC. 301. DETERMINATION RELATING TO BYTEDANCE,**
18 **LTD., TIKTOK, AND RELATED ENTITIES.**

19 (a) IN GENERAL.—Not later than 90 days after the
20 date of the enactment of this Act, and every 180 days
21 thereafter for 3 years, the President shall transmit to the
22 appropriate congressional committees a determination of
23 whether reasonable grounds exist for concluding that any
24 of the entities described in subsection (b)—

1 (1) meets the criteria described in paragraph
2 (1) or (2) of section 102 for purposes of applying a
3 directive described in such section with respect to
4 the entity; or

5 (2) have engaged in any conduct described in
6 section 201.

7 (b) ENTITIES DESCRIBED.—The entities described in
8 this subsection are—

9 (1) Bytedance, Ltd.;

10 (2) TikTok;

11 (3) any subsidiary of or a successor to an entity
12 described in paragraph (1) or (2); and

13 (4) any entity owned or controlled directly or
14 indirectly by an entity described in paragraph (1),
15 (2), or (3).

16 (c) FORM.—The determination described in sub-
17 section (a) shall be transmitted in unclassified form, and
18 any supporting documentation may be transmitted in a
19 classified annex.

20 (d) APPLICATION OF SANCTIONS.—If the President
21 makes an affirmative decision under subsection (a) with
22 respect to any entity described in subsection (b), the Presi-
23 dent shall impose the sanction described in section 202
24 with respect to the entity, as appropriate.

1 **SEC. 302. REQUESTS BY APPROPRIATE CONGRESSIONAL**
2 **COMMITTEES.**

3 (a) **IN GENERAL.**—Not later than 120 days after re-
4 ceiving a request from the chairperson or ranking member
5 of one or more of the appropriate congressional commit-
6 tees with respect to whether a foreign person meets the
7 criteria described in paragraph (1) or (2) of section 102
8 for purposes of applying a directive described in such sec-
9 tion with respect to the person, or have engaged in any
10 conduct described in section 201 for the imposition of the
11 sanction described in section 202, the President shall—

12 (1) determine if that person meets the require-
13 ments described in the applicable section; and

14 (2) submit to the chairperson and ranking
15 member of the committee or committees a report
16 that includes—

17 (A) a statement of whether or not the
18 President imposed or intends to impose such
19 sanction with respect to the person; and

20 (B) if applicable, a description of the sanc-
21 tion so imposed or intended to be imposed.

22 (b) **AVAILABILITY OF INFORMATION.**—

23 (1) **IN GENERAL.**—Any information obtained at
24 any time with respect to the President making a de-
25 termination with respect to a foreign person under
26 subsection (a), or under any review of the foreign

1 person through other United States Government na-
2 tional security review processes, shall be made avail-
3 able to a committee or subcommittee of Congress of
4 appropriate jurisdiction, upon the request of the
5 chairman or ranking minority member of such com-
6 mittee or subcommittee.

7 (2) PROHIBITION ON DISCLOSURE.—No such
8 committee or subcommittee, or member thereof, may
9 disclose any information made available under clause
10 (i), that is submitted on a confidential basis unless
11 the full committee determines that the withholding
12 of that information is contrary to the national inter-
13 est.

14 (c) FORM.—Each determination described in sub-
15 section (a)(1), and each report under subsection (a)(2),
16 may be submitted in classified or unclassified form, and
17 any supporting documentation to such determination or
18 report may contain a classified annex.