

Union Calendar No. 43

118TH CONGRESS
1ST SESSION

H. R. 1153

[Report No. 118-63]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2023

Mr. McCAUL introduced the following bill; which was referred to the
Committee on Foreign Affairs

MAY 16, 2023

Additional sponsor: Mr. SMITH of New Jersey

MAY 16, 2023

Reported from the Committee on Foreign Affairs; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To provide a clarification of non-applicability for regulation and prohibition relating to sensitive personal data under the 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”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
 8 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 REGULA-
TION AND PROHIBITION RELATING TO SENSITIVE PERSONAL
DATA UNDER INTERNATIONAL EMERGENCY ECONOMIC POW-
ERS ACT

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

TITLE II—IMPOSITION OF SANCTIONS ON CERTAIN TRANS-
ACTIONS 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 enti-
ties.
- Sec. 302. Requests by appropriate congressional committees.

9 **SEC. 2. FINDINGS.**

10 Congress finds the following:

11 (1) On December 2, 2022, the Director of the
 12 Federal Bureau of Investigation, Christopher Wray,
 13 stated, “We . . . do have national security concerns

1 about the app [TikTok]. Its parent company is con-
2 trolled by the Chinese government. And it gives
3 them the potential to leverage the app in ways that
4 I think should concern us . . . One, it gives them
5 the ability to control the recommendation algorithm
6 which allows them to manipulate content and if they
7 want to, to use it for influence operations which are
8 a lot more worrisome in the hands of the Chinese
9 Communist Party than whether or not you're steer-
10 ing somebody as an influencer to one product or an-
11 other. They also have the ability to collect data
12 through it on users which can be used for traditional
13 espionage operations, for example. They also have
14 the ability on it to get access, they have essentially
15 access to the software to devices. So you're talking
16 about millions of devices and that gives them the
17 ability to engage in different kinds of malicious
18 cyber activity through that. And so all of these
19 things are in the hands of a government that doesn't
20 share our values and that has a mission that's very
21 much at odds with what's in the best interest of the
22 United States that that should concern us.”.

23 (2) On December 3, 2022, the Director of Na-
24 tional Intelligence, Avril Haines, “It is extraordinary
25 the degree to which China, in particular, but they’re

1 not the only ones, obviously, are developing just
2 frameworks for collecting foreign data and pulling it
3 in and their capacity to then turn that around and
4 use it to target audiences for information campaigns
5 or for other things, but also to have it for the future
6 so that they can use it for a variety of means that
7 they're interested in.".

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

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

1 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

2 No additional amounts are authorized to be made
3 available to carry out this Act.

4 **SEC. 4. SEVERABILITY.**

5 If any provision of this Act or its application to any
6 person or circumstance is held invalid, the invalidity does
7 not affect other provisions or applications of this section
8 that can be given effect without the invalid provision or
9 application, and to this end the provisions of this Act are
10 severable.

11 **SEC. 5. DEFINITIONS.**

12 In this Act:

13 (1) AGENCY OR INSTRUMENTALITY OF A FOR-
14 EIGN STATE.—The term “agency or instrumentality
15 of a foreign state” has the meaning given such term
16 under section 1603(b) of title 28, United States
17 Code.

18 (2) APPROPRIATE CONGRESSIONAL COMMIT-
19 TEES.—The term “appropriate congressional com-
20 mittees” means—

21 (A) the Committee on Foreign Affairs,
22 Committee on Ways and Means, and the Com-
23 mittee on Financial Services of the House of
24 Representatives; and

1 (B) the Committee on Foreign Relations
2 and the Committee on Banking, Housing, and
3 Urban Affairs of the Senate.

4 (3) CHINA.—The term “China” means—

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

7 (B) otherwise, the Government of the
8 country of the People’s Republic of China, in-
9 cluding any entity acting on behalf of, or the
10 benefit of—

11 (i) the country of the People’s Repub-
12 lic of China; or

13 (ii) the Government of the country of
14 the People’s Republic of China.

15 (4) CONNECTED SOFTWARE APPLICATION.—

16 The term “connected software application” has the
17 meaning given such term in Executive Order 14034
18 (86 Fed. Reg. 31423; relating to protecting Ameri-
19 cans’ sensitive data from foreign adversaries).

20 (5) ELECTION INTERFERENCE IN OR AGAINST A
21 FOREIGN COUNTRY THAT IS A TREATY ALLY OF THE
22 UNITED STATES OR A DEMOCRATIC OR EMERGING
23 DEMOCRATIC PARTNER OF THE UNITED STATES.—

24 The term “election interference in or against a for-
25 eign country that is a treaty ally of the United

1 States or a democratic or emerging democratic part-
2 ner of the United States” means actions to engage
3 in, directly or indirectly, activities originating from,
4 or directed by, persons located, in whole or in sub-
5 stantial part, outside the territory of a treaty ally of
6 the United States or a democratic or emerging
7 democratic partner of the United States that have
8 the purpose or effect of tampering with, altering, un-
9 lawfully accessing, or causing a misappropriation of
10 information with the purpose or effect of interfering
11 with or undermining election processes or institu-
12 tions.

13 (6) ELECTION INTERFERENCE IN OR AGAINST
14 THE UNITED STATES.—The term “election inter-
15 ference in or against the United States” includes ac-
16 tions to engage in, directly or indirectly, activities
17 originating from, or directed by persons located, in
18 whole or in substantial part, outside the United
19 States that—

20 (A) have the purpose or effect of tam-
21 pering with, altering, unlawfully accessing, or
22 causing a misappropriation of information with
23 the purpose or effect of undermining election
24 processes or institutions;

1 (B) deny access, block, degrade, or alter
2 election and campaign infrastructure, or related
3 systems or data related to political parties, can-
4 didates in elections for public office, the admin-
5 istration of elections for public office, or any
6 public election activity; or

7 (C) consist of the making of contributions
8 or donations, or any other activity prohibited
9 under section 319 of the Federal Election Cam-
10 paign Act of 1971 (52 U.S.C. 30121), with the
11 purpose or effect of undermining election proc-
12 esses or institutions.

13 (7) FOREIGN PERSON.—The term “foreign per-
14 son”—

15 (A) means a person that is not a United
16 States person; and

17 (B) includes a nonresident alien individual,
18 foreign corporation, foreign partnership, foreign
19 trust, foreign estate.

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

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

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

9 (A) The North Atlantic Treaty, signed at
10 Washington, April 4, 1949.

11 (B) The Security Treaty Between Aus-
12 tralia, New Zealand, and the United States of
13 America, signed at San Francisco, September
14 1, 1951.

15 (C) The Mutual Defense Treaty Between
16 the United States of America and the Republic
17 of the Philippines, signed at Washington, Au-
18 gust 30, 1951.

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

21 (E) The Treaty of Mutual Cooperation and
22 Security Between the United States of America
23 and Japan, signed at Washington, January 19,
24 1960.

1 (F) The Mutual Defense Treaty Between
2 the United States of America and the Republic
3 of Korea, signed at Washington, October 1,
4 1953.

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

7 (A) a United States citizen;

8 (B) a permanent resident alien;

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

11 or

12 (D) any person in the United States.

13 **TITLE I—CLARIFICATION OF**
14 **NON-APPLICABILITY FOR**
15 **REGULATION AND PROHIBI-**
16 **TION RELATING TO SEN-**
17 **SITIVE PERSONAL DATA**
18 **UNDER INTERNATIONAL**
19 **EMERGENCY ECONOMIC POW-**
20 **ERS ACT**

21 **SEC. 101. CLARIFICATION.**

22 (a) IN GENERAL.—The importation to a country, or
23 the exportation from a country, of sensitive personal data
24 shall not constitute the importation from a country, or the
25 exportation to a country, of information or informational

1 materials for purposes of paragraph (1) or (3) of section
2 203(b) of the International Emergency Economic Powers
3 Act (50 U.S.C. 1702(b)).

4 (b) RULE OF CONSTRUCTION.—Nothing in sub-
5 section (a), and nothing in the International Emergency
6 Economic Powers Act, may be construed to provide for
7 the application of paragraph (1) or (3) of section 203(b)
8 of the International Emergency Economic Powers Act (50
9 U.S.C. 1702(b)) to the importation to China, or the expor-
10 tation from China, directly or indirectly, of sensitive per-
11 sonal data.

12 **SEC. 102. DIRECTIVE.**

13 Not later than 180 days after the date of the enact-
14 ment of this Act, the Secretary of the Treasury shall issue
15 a directive prohibiting United States persons from engag-
16 ing in any transaction with a person that the Secretary
17 of the Treasury determines knowingly provides or may
18 transfer sensitive personal data of persons subject to
19 United States jurisdiction to any foreign person that—

20 (1) is subject to the jurisdiction or direction of,
21 or directly or indirectly operating on behalf of,
22 China; or

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

1 **TITLE II—IMPOSITION OF SANC-**
2 **TIONS ON CERTAIN TRANS-**
3 **ACTIONS RELATING TO CON-**
4 **NECTED SOFTWARE APPLICA-**
5 **TIONS**

6 **SEC. 201. IMPOSITION OF SANCTIONS.**

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

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

13 (A) is subject to the jurisdiction or direc-
14 tion of, or directly or indirectly operating on be-
15 half of China, or is owned by, directly or indi-
16 rectly controlled by, or otherwise subject to the
17 influence of China; and

18 (B) is reasonable believed to have facili-
19 tated or may be facilitating or contributing to
20 China's—

21 (i) military, intelligence, espionage, or
22 weapons proliferation activities;

23 (ii) censorship activities;

24 (iii) surveillance activities;

1 (iv) control or use of recommendation
2 algorithms that are capable of manipu-
3 lating content;

4 (v) malicious cyber activities; or

5 (vi) use of data to target audiences
6 for information campaigns;

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

10 (3) directly or indirectly orders, controls, di-
11 rects, engages in, or otherwise facilitates an act of
12 election interference in or against a foreign country
13 that is—

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

15 (B) a democratic or emerging democratic
16 partner of the United States;

17 (4) directly or indirectly orders, controls, di-
18 rects, engages in, or otherwise facilitates an act of
19 steering United States policy and regulatory deci-
20 sions in favor of China's strategic objectives, to the
21 detriment of the economic or national security of the
22 United States;

23 (5) knowingly facilitates a transaction or trans-
24 actions for or on behalf of a person described, or a

1 person that has engaged in the activity described, as
2 the case may be, in paragraph (1), (2), (3), or (4);

3 (6) knowingly assists, sponsors, or provides fi-
4 nancial, material, or technological support for a per-
5 son described, or a person that has engaged in the
6 activity described, as the case may be, in paragraph
7 (1), (2), (3), or (4); or

8 (7) is owned or controlled by, or has acted for
9 or on behalf of, directly or indirectly, a person de-
10 scribed, or a person that has engaged in the activity
11 described, as the case may be, in paragraph (1), (2),
12 (3), or (4).

13 (b) LIST OF FOREIGN COUNTRIES THAT ARE DEMO-
14 CRATIC OR EMERGING DEMOCRATIC PARTNERS OF THE
15 UNITED STATES.—

16 (1) IN GENERAL.—Not later than 90 days after
17 the date of the enactment of this Act, the President
18 shall submit to the appropriate congressional com-
19 mittees—

20 (A) a definition of the term “democratic or
21 emerging democratic partner of the United
22 States”; and

23 (B) a list of foreign countries that are des-
24 ignated as a democratic or emerging democratic
25 partner of the United States for purposes of

1 subsection (a)(3) that includes the countries
2 listed in paragraph (2).

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

8 (3) UPDATES.—The President shall submit to
9 the appropriate congressional committees an up-
10 dated list under subparagraph (A) on a periodic
11 basis.

12 **SEC. 202. SANCTION DESCRIBED.**

13 (a) IN GENERAL.—The sanction described in this
14 section is the exercise of all powers granted to the Presi-
15 dent by the International Emergency Economic Powers
16 Act (50 U.S.C. 1701 et seq.) (except that the require-
17 ments of section 202 of such Act (50 U.S.C. 1701) shall
18 not apply) to the extent necessary to block and prohibit
19 all transactions in all property and interests in property
20 of any foreign person or an agency or instrumentality of
21 a foreign state, as the case may be, if such property and
22 interests in property are in the United States, come within
23 the United States, or are or come within the possession
24 or control of a United States person.

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

5 (c) REGULATIONS.—

6 (1) IN GENERAL.—The President shall pre-
7 scribe such regulations as may be necessary for the
8 implementation of this title.

9 (2) PRIOR BRIEFING REQUIRED.—Not later
10 than 10 days before the prescription of regulations
11 under paragraph (1), the President shall brief the
12 appropriate congressional committees regarding the
13 proposed regulations and the provisions of this title
14 that such regulations are implementing.

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

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

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

4 (2) Any transaction necessary to comply with
5 United States obligations under the Agreement be-
6 tween the United Nations and the United States of
7 America regarding the Headquarters of the United
8 States, signed at Lake Success June 26, 1947, and
9 entered into force November 21, 1947, or the Con-
10 vention on Consular Relations, done at Vienna April
11 24, 1963, and entered into force March 19, 1967, or
12 any other United States international agreement.

13 (f) WAIVER.—The President may, on a case-by-case
14 basis and for periods not to exceed 180 days each, waive
15 the application of sanctions imposed with respect to a for-
16 eign person under this title if the President certifies to
17 the appropriate congressional committees, not later than
18 15 days before such waiver is to take effect, that the waiv-
19 er is vital to the national security interests of the United
20 States.

21 **SEC. 203. SUNSET.**

22 This title, and the authorities provided by this title,
23 shall terminate on the date that is 5 years after the date
24 of the enactment of this Act.

1 **TITLE III—SPECIFIC DETER-**
2 **MINATIONS WITH RESPECT**
3 **TO THE IMPOSITION OF SANC-**
4 **TIONS**

5 **SEC. 301. DETERMINATION RELATING TO BYTEDANCE,**
6 **LTD., TIKTOK, AND RELATED ENTITIES.**

7 (a) IN GENERAL.—Not later than 90 days after the
8 date of the enactment of this Act, and every 180 days
9 thereafter for 3 years, the President shall transmit to the
10 appropriate congressional committees a determination of
11 whether reasonable grounds exist for concluding that any
12 of the entities described in subsection (b)—

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

17 (2) have engaged in any conduct described in
18 section 201.

19 (b) ENTITIES DESCRIBED.—The entities described in
20 this subsection are—

21 (1) Bytedance, Ltd.;

22 (2) TikTok;

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

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

4 (c) FORM.—The determination described in sub-
5 section (a) shall be transmitted in unclassified form, and
6 any supporting documentation may be transmitted in a
7 classified annex.

8 (d) APPLICATION OF SANCTIONS.—If the President
9 makes an affirmative decision under subsection (a) with
10 respect to any entity described in subsection (b), the Presi-
11 dent shall impose the sanction described in section 202
12 with respect to the entity, as appropriate.

13 **SEC. 302. REQUESTS BY APPROPRIATE CONGRESSIONAL**
14 **COMMITTEES.**

15 (a) IN GENERAL.—Not later than 120 days after re-
16 ceiving a request from the chairperson or ranking member
17 of one or more of the appropriate congressional commit-
18 tees with respect to whether a foreign person meets the
19 criteria described in paragraph (1) or (2) of section 102
20 for purposes of applying a directive described in such sec-
21 tion with respect to the person, or have engaged in any
22 conduct described in section 201 for the imposition of the
23 sanction described in section 202, the President shall—

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

1 (2) submit to the chairperson and ranking
2 member of the committee or committees a report
3 that includes—

4 (A) a statement of whether or not the
5 President imposed or intends to impose such
6 sanction with respect to the person; and

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

9 (b) AVAILABILITY OF INFORMATION.—

10 (1) IN GENERAL.—Any information obtained at
11 any time with respect to the President making a de-
12 termination with respect to a foreign person under
13 subsection (a), or under any review of the foreign
14 person through other United States Government na-
15 tional security review processes, shall be made avail-
16 able to a committee or subcommittee of Congress of
17 appropriate jurisdiction, upon the request of the
18 chairman or ranking minority member of such com-
19 mittee or subcommittee.

20 (2) PROHIBITION ON DISCLOSURE.—No such
21 committee or subcommittee, or member thereof, may
22 disclose any information made available under clause
23 (i), that is submitted on a confidential basis unless
24 the full committee determines that the withholding

1 of that information is contrary to the national inter-
2 est.

3 (c) FORM.—Each determination described in sub-
4 section (a)(1), and each report under subsection (a)(2),
5 may be submitted in classified or unclassified form, and
6 any supporting documentation to such determination or
7 report may contain a classified annex.

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118TH CONGRESS
1ST Session

H. R. 1153

[Report No. 118-63]

A BILL

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

MAY 16, 2023

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed