

NORTH KOREA SANCTIONS ENFORCEMENT ACT OF 2015

JANUARY 11, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROYCE, from the Committee on Foreign Affairs,
submitted the following

R E P O R T

[To accompany H.R. 757]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 757) to improve the enforcement of sanctions against the Government of North Korea, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “North Korea Sanctions Enforcement Act of 2015”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—INVESTIGATIONS, PROHIBITED CONDUCT, AND PENALTIES

- Sec. 101. Statement of policy.
- Sec. 102. Investigations.
- Sec. 103. Briefing to Congress.
- Sec. 104. Designation of persons for prohibited conduct and mandatory and discretionary designation and sanctions authorities.
- Sec. 105. Forfeiture of property.

TITLE II—SANCTIONS AGAINST NORTH KOREAN PROLIFERATION, HUMAN RIGHTS ABUSES, ILLICIT ACTIVITIES, AND SIGNIFICANT ACTIVITIES UNDERMINING CYBER SECURITY

- Sec. 201. Determinations with respect to North Korea as a jurisdiction of primary money laundering concern.
- Sec. 202. Ensuring the consistent enforcement of United Nations Security Council resolutions and financial restrictions on North Korea.
- Sec. 203. Proliferation prevention sanctions.
- Sec. 204. Procurement sanctions.
- Sec. 205. Enhanced inspections authorities.
- Sec. 206. Travel sanctions.
- Sec. 207. Exemptions, waivers, and removals of designation.
- Sec. 208. Report on those responsible for knowingly engaging in significant activities undermining cyber security.
- Sec. 209. Sense of Congress that trilateral cooperation among the United States, Japan, and the Republic of Korea is crucial to the stability of the Asia-Pacific region.
- Sec. 210. Report on nuclear program cooperation between North Korea and Iran.

TITLE III—PROMOTION OF HUMAN RIGHTS

- Sec. 301. Information technology.
- Sec. 302. Report on North Korean prison camps.
- Sec. 303. Report on persons who are responsible for serious human rights abuses or censorship in North Korea.

TITLE IV—GENERAL AUTHORITIES

- Sec. 401. Suspension of sanctions and other measures.
- Sec. 402. Termination of sanctions and other measures.
- Sec. 403. Authority to consolidate reports.
- Sec. 404. Regulations.
- Sec. 405. Effective date.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) The Government of North Korea has repeatedly violated its commitments to the complete, verifiable, irreversible dismantlement of its nuclear weapons programs, and has willfully violated multiple United Nations Security Council resolutions calling for it to cease its development, testing, and production of weapons of mass destruction.
- (2) North Korea poses a grave risk for the proliferation of nuclear weapons and other weapons of mass destruction.
- (3) The Government of North Korea has been implicated repeatedly in money laundering and illicit activities, including prohibited arms sales, narcotics trafficking, the counterfeiting of United States currency, and the counterfeiting of intellectual property of United States persons.
- (4) The Government of North Korea has, both historically and recently, repeatedly sponsored acts of international terrorism, including attempts to assassinate defectors and human rights activists, repeated threats of violence against foreign persons, leaders, newspapers, and cities, and the shipment of weapons to terrorists and state sponsors of terrorism.
- (5) North Korea has unilaterally withdrawn from the 1953 Armistice Agreement that ended the Korean War, and committed provocations against South Korea in 2010 by sinking the warship Cheonan and killing 46 of her crew, and by shelling Yeonpyeong Island, killing four South Koreans.
- (6) North Korea maintains a system of brutal political prison camps that contain as many as 120,000 men, women, and children, who live in atrocious living conditions with insufficient food, clothing, and medical care, and under constant fear of torture or arbitrary execution.
- (7) The Congress reaffirms the purposes of the North Korean Human Rights Act of 2004 contained in section 4 of such Act (22 U.S.C. 7802).
- (8) North Korea has prioritized weapons programs and the procurement of luxury goods, in defiance of United Nations Security Council resolutions, and in gross disregard of the needs of its people.
- (9) The President has determined that the Government of North Korea is responsible for knowingly engaging in significant activities undermining cyber se-

curity with respect to United States persons and interests, and for threats of violence against the civilian population of the United States.

(10) Persons, including financial institutions, who engage in transactions with, or provide financial services to, the Government of North Korea and its financial institutions without establishing sufficient financial safeguards against North Korea's use of these transactions to promote proliferation, weapons trafficking, human rights violations, illicit activity, and the purchase of luxury goods, aid and abet North Korea's misuse of the international financial system, and also violate the intent of relevant United Nations Security Council resolutions.

(11) The Government of North Korea's conduct poses an imminent threat to the security of the United States and its allies, to the global economy, to the safety of members of the United States Armed Forces, to the integrity of the global financial system, to the integrity of global nonproliferation programs, and to the people of North Korea.

(12) The Congress seeks, through this legislation, to use nonmilitary means to address this crisis, to provide diplomatic leverage to negotiate necessary changes in North Korea's conduct, and to ease the suffering of the people of North Korea.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPLICABLE EXECUTIVE ORDER.—The term “applicable Executive order” means—

(A) Executive Order No. 13382 (2005), 13466 (2008), 13551 (2010), or 13570 (2011), to the extent that such Executive order authorizes the imposition of sanctions on persons for conduct, or prohibits transactions or activities, involving the Government of North Korea; or

(B) any Executive order adopted on or after the date of the enactment of this Act, to the extent that such Executive order authorizes the imposition of sanctions on persons for conduct, or prohibits transactions or activities, involving the Government of North Korea.

(2) APPLICABLE UNITED NATIONS SECURITY COUNCIL RESOLUTION.—The term “applicable United Nations Security Council resolution” means—

(A) United Nations Security Council Resolution 1695 (2006), 1718 (2006), 1874 (2009), 2087 (2013), or 2094 (2013); or

(B) any United Nations Security Council resolution adopted on or after the date of the enactment of this Act, to the extent that such resolution authorizes the imposition of sanctions on persons for conduct, or prohibits transactions or activities, involving the Government of North Korea.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

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

(4) DESIGNATED PERSON.—The term “designated person” means a person designated under subsection (a) or (b) of section 104 for purposes of applying one or more of the sanctions described in title I or II of this Act with respect to the person.

(5) GOVERNMENT OF NORTH KOREA.—The term “Government of North Korea” means—

(A) the Government of the Democratic People's Republic of Korea or any political subdivision, agency, or instrumentality thereof; and

(B) any person owned or controlled by, or acting for or on behalf of, the Government of the Democratic People's Republic of Korea.

(6) INTERNATIONAL TERRORISM.—The term “international terrorism” has the meaning given such term in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)), and includes the conduct described in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii)), to the extent such conduct involves the citizens of more than one country.

(7) LUXURY GOODS.—The term “luxury goods” has the meaning given such term in subpart 746.4 of title 15, Code of Federal Regulations, and includes the items listed in Supplement No. 1 to such regulation, and any similar items.

(8) MONETARY INSTRUMENT.—The term “monetary instrument” has the meaning given such term under section 5312 of title 31, United States Code.

(9) NORTH KOREAN FINANCIAL INSTITUTION.—The term “North Korean financial institution” means—

(A) a financial institution organized under the laws of North Korea or any jurisdiction within North Korea (including a foreign branch of such institution);

(B) any financial institution located in North Korea, except as may be excluded from such definition by the President in accordance with section 207(d);

(C) any financial institution, wherever located, owned or controlled by the Government of North Korea; and

(D) any financial institution, wherever located, owned or controlled by a financial institution described in subparagraph (A), (B), or (C).

(10) OTHER STORES OF VALUE.—The term “other stores of value” means—

(A) prepaid access devices, tangible or intangible prepaid access devices, or other instruments or devices for the storage or transmission of value, as defined in part 1010 of title 31, Code of Federal Regulations; and

(B) any covered goods, as defined in section 1027.100 of title 31, Code of Federal Regulations, and any instrument or tangible or intangible access device used for the storage and transmission of a representation of covered goods, or other device, as defined in section 1027.100 of title 31, Code of Federal Regulations.

(11) PERSON.—The term “person” means an individual or entity as determined by the Secretary of State and the Secretary of the Treasury.

(12) SIGNIFICANT ACTIVITIES UNDERMINING CYBER SECURITY.—The term “significant activities undermining cyber security” means—

(A) significant efforts to—

(i) deny access to or degrade, disrupt, or destroy an information and communications technology system or network; or

(ii) exfiltrate information from such a system or network without authorization;

(B) significant destructive malware attacks;

(C) significant denial of service activities; or

(D) such other significant activities as may be described in regulations promulgated to implement section 104.

(13) UNITED STATES PERSON.—The term “United States person” means—

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and

(B) a corporation or other legal entity which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity.

TITLE I—INVESTIGATIONS, PROHIBITED CONDUCT, AND PENALTIES

SEC. 101. STATEMENT OF POLICY.

In order to achieve the peaceful disarmament of North Korea, Congress finds that it is necessary—

(1) to encourage all states to fully and promptly implement United Nations Security Council Resolution 2094 (2013);

(2) to sanction—

(A) persons that facilitate proliferation of weapons of mass destruction, illicit activities, arms trafficking, imports of luxury goods, cash smuggling, censorship, and knowingly engage in significant activities undermining cyber security by the Government of North Korea; and

(B) persons that fail to exercise due diligence to ensure that financial institutions do not facilitate any of the activities described in subparagraph (A) by the Government of North Korea;

(3) to deny the Government of North Korea access to the funds it uses to obtain nuclear weapons, ballistic missiles, offensive cyber capabilities, and luxury goods instead of providing for the needs of its people; and

(4) to enforce sanctions in a manner that avoids any adverse humanitarian impact on the people of North Korea to the extent possible and in a manner that does not unduly constrain the enforcement of such sanctions.

SEC. 102. INVESTIGATIONS.

The President shall initiate an investigation into the possible designation of a person under section 104(a) upon receipt by the President of credible information indicating that such person has engaged in conduct described in section 104(a).

SEC. 103. BRIEFING TO CONGRESS.

Not later than 180 days after the date of the enactment of this Act, and periodically thereafter, the President shall provide to the appropriate congressional committees a briefing on efforts to implement this Act, to include the following, to the extent the information is available:

- (1) The principal foreign assets and sources of foreign income of the Government of North Korea.
- (2) A list of the persons designated under subsections (a) and (b) of section 104.
- (3) A list of the persons with respect to which sanctions were waived or removed under section 207.
- (4) A summary of any diplomatic efforts made in accordance with section 202(b) and of the progress realized from such efforts, including efforts to encourage the European Union and other states and jurisdictions to sanction and block the assets of the Foreign Trade Bank of North Korea and Daedong Credit Bank.

SEC. 104. DESIGNATION OF PERSONS FOR PROHIBITED CONDUCT AND MANDATORY AND DISCRETIONARY DESIGNATION AND SANCTIONS AUTHORITIES.**(a) PROHIBITED CONDUCT AND MANDATORY DESIGNATION AND SANCTIONS AUTHORITY.—**

- (1) **CONDUCT DESCRIBED.**—Except as provided in section 207, the President shall designate under this subsection any person the President determines to—
 - (A) have knowingly engaged in significant activities or transactions with the Government of North Korea that have materially contributed to the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items;
 - (B) have knowingly imported, exported, or reexported to, into, or from North Korea any significant arms or related materiel, whether directly or indirectly;
 - (C) have knowingly provided significant training, advice, or other services or assistance, or engaged in significant transactions, related to the manufacture, maintenance, or use of any arms or related materiel to be imported, exported, or reexported to, into, or from North Korea, or following their importation, exportation, or reexportation to, into, or from North Korea, whether directly or indirectly;
 - (D) have knowingly, directly or indirectly, imported, exported, or reexported significant luxury goods to or into North Korea;
 - (E) have knowingly engaged in or been responsible for censorship by the Government of North Korea, including prohibiting, limiting, or penalizing the exercise of freedom of expression or assembly, limiting access to print, radio or other broadcast media, Internet or other electronic communications, or the facilitation or support of intentional frequency manipulation that would jam or restrict an international signal;
 - (F) have knowingly engaged in or been responsible for serious human rights abuses by the Government of North Korea, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, forced labor or trafficking in persons, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other denial of the right to life, liberty, or the security of a person;
 - (G) have knowingly, directly or indirectly, engaged in acts of money laundering, the counterfeiting of goods or currency, bulk cash smuggling, narcotics trafficking, or other illicit activity that involves or supports the Government of North Korea or any senior official thereof, whether directly or indirectly; or
 - (H) have knowingly attempted to engage in any of the conduct described in subparagraphs (A) through (G) of this paragraph.
- (2) **EFFECT OF DESIGNATION.**—With respect to any person designated under this subsection, the President—
 - (A) shall exercise the authorities of the International Emergency Economic Powers Act (50 U.S.C. 1705 et seq.) to block all property and interests in property of any person designated under this subsection that are in

the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch; and

(B) may apply any of the sanctions described in sections 204, 205(c), and 206.

(3) PENALTIES.—The penalties provided for in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) shall apply to a person who violates, attempts to violate, conspires to violate, or causes a violation of any prohibition provided for in this subsection, or of an order or regulation prescribed under this Act, to the same extent that such penalties apply to a person that commits an unlawful act described in section 206(a) of that Act (50 U.S.C. 1705(a)).

(4) DEFINITION.—In paragraph (1)(F), the term “trafficking in persons” has the meaning given the term in section 103(9) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)).

(b) DISCRETIONARY DESIGNATION AND SANCTIONS AUTHORITY.—

(1) CONDUCT DESCRIBED.—Except as provided in section 207 and paragraph (3) of this subsection, the President may designate under this subsection any person that the President determines to—

(A) have knowingly engaged in, contributed to, assisted, sponsored, or provided financial, material or technological support for, or goods and services in support of, any violation of, or evasion of, an applicable United Nations Security Council resolution;

(B) have knowingly facilitated the transfer of any funds, financial assets, or economic resources of, or property or interests in property of a person designated under an applicable Executive order, or by the United Nations Security Council pursuant to an applicable United Nations Security Council resolution;

(C) have knowingly facilitated the transfer of any funds, financial assets, or economic resources, or any property or interests in property derived from, involved in, or that has materially contributed to conduct prohibited by subsection (a) or an applicable United Nations Security Council resolution;

(D) have knowingly facilitated any transaction, including any transaction in bulk cash or other stores of value, without applying enhanced monitoring to ensure that such transaction does not contribute materially to conduct described in subsection (a) an applicable Executive order, or an applicable United Nations Security Council resolution;

(E) have knowingly facilitated any transactions in cash or monetary instruments or other stores of value, including through cash couriers transiting to or from North Korea, used to facilitate any conduct prohibited by an applicable United Nations Security Council resolution;

(F) have knowingly, directly or indirectly, engaged in significant activities undermining cyber security for, in support of or on behalf of, the Government of North Korea or any senior official thereof, or have knowingly contributed to the bribery of an official of the Government of North Korea, the misappropriation, theft, or embezzlement of public funds by, or for the benefit of, an official of the Government of North Korea, or the use of any proceeds of any such conduct; or

(G) have knowingly and materially assisted, sponsored, or provided significant financial, material, or technological support for, or goods or services to or in support of, the conduct described in subparagraphs (A) through (F) of this paragraph or the conduct described in subparagraphs (A) through (G) of subsection (a)(1).

(2) EFFECT OF DESIGNATION.—With respect to any person designated under this subsection, the President—

(A) may apply the sanctions described in section 204;

(B) may apply any of the special measures described in section 5318A of title 31, United States Code;

(C) may prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which such person has any interest;

(D) may prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the person; and

(E) may exercise the authorities of the International Emergency Economic Powers Act (50 U.S.C. 1705 et seq.) without regard to section 202 of such Act to block any property and interests in property of any person des-

ignated under this subsection that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch.

(3) LIMITATION.—If the President determines that a person has engaged in any conduct described in subparagraphs (A) through (F) of paragraph (1) that may also be construed to constitute conduct described in subparagraphs (A) through (H) of subsection (a)(1), the President may not designate the person under this subsection but rather shall designate the person under subsection (a).

(c) BLOCKING OF ALL PROPERTY AND INTERESTS IN PROPERTY OF THE GOVERNMENT OF NORTH KOREA AND THE WORKER'S PARTY OF KOREA.—Except as provided in section 207, the President shall exercise the authorities of the International Emergency Economic Powers Act (50 U.S.C. 1705 et seq.) to block all property and interests in property of the Government of North Korea or the Worker's Party of Korea that on or after the date of the enactment of this Act come within the United States, or that come within the possession or control of any United States person, including any overseas branch.

(d) APPLICATION.—The designation of a person under subsection (a) or (b) and the blocking of property and interests in property under subsection (c) shall also apply with respect to a person who is determined to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

(e) LICENSING.—

(1) LICENSE REQUIRED.—Not later than 180 days after the date of enactment of this Act, the President shall promulgate regulations prohibiting United States persons from engaging in any transaction involving any property—

- (A) in which the Government of North Korea has an interest;
- (B) located in North Korea;
- (C) of North Korean origin; or
- (D) knowingly transferred, directly or indirectly, to the Government of North Korea.

(2) TRANSACTION LICENSING.—The President shall deny or revoke any license for any transaction that, in the determination of the President, lacks sufficient financial controls to ensure that such transaction will not facilitate any of the conduct described in subsection (a) or subsection (b).

(3) LICENSING AUTHORIZATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the President may issue regulations to authorize—

- (i) transactions for the purposes described in section 207; and
- (ii) transactions and activities authorized under North Korean Human Rights Act of 2004 (22 U.S.C. 7801 et seq.).

(B) PROHIBITION.—The President may not issue regulations to authorize transactions under clause (i) or (ii) of subparagraph (A) if such transactions include any transactions with the Government of North Korea.

SEC. 105. FORFEITURE OF PROPERTY.

(a) AMENDMENT TO PROPERTY SUBJECT TO FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

“(I) Any property, real or personal, that is involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 104(a) of the North Korea Sanctions Enforcement Act of 2015.”.

(b) AMENDMENT TO DEFINITION OF CIVIL FORFEITURE STATUTE.—Section 983(i)(2)(D) of title 18, United States Code, is amended—

(1) by striking “or the International Emergency Economic Powers Act” and inserting “, the International Emergency Economic Powers Act”; and

(2) by adding at the end before the semicolon the following: “, or the North Korea Sanctions Enforcement Act of 2015”.

(c) AMENDMENT TO DEFINITION OF SPECIFIED UNLAWFUL ACTIVITY.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking “or section 92 of the Atomic Energy Act of 1954” and inserting “section 92 of the Atomic Energy Act of 1954”; and

(2) by adding at the end the following: “, or section 104(a) of the North Korea Sanctions Enforcement Act of 2015;”.

TITLE II—SANCTIONS AGAINST NORTH KOREAN PROLIFERATION, HUMAN RIGHTS ABUSES, ILLICIT ACTIVITIES, AND SIGNIFICANT ACTIVITIES UNDERMINING CYBER SECURITY

SEC. 201. DETERMINATIONS WITH RESPECT TO NORTH KOREA AS A JURISDICTION OF PRIMARY MONEY LAUNDERING CONCERN.

(a) FINDINGS.—Congress makes the following findings:

(1) The Undersecretary of the Treasury for Terrorism and Financial Intelligence, who is responsible for safeguarding the financial system against illicit use, money laundering, terrorist financing, and the proliferation of weapons of mass destruction, has repeatedly expressed concern about North Korea's misuse of the international financial system as follows:

(A) In 2006, the Undersecretary stated that, given North Korea's "counterfeiting of U.S. currency, narcotics trafficking and use of accounts worldwide to conduct proliferation-related transactions, the line between illicit and licit North Korean money is nearly invisible" and urged financial institutions worldwide to "think carefully about the risks of doing any North Korea-related business."

(B) In 2011, the Undersecretary stated that "North Korea remains intent on engaging in proliferation, selling arms as well as bringing in material," and was "aggressively pursuing the effort to establish front companies."

(C) In 2013, the Undersecretary stated, in reference to North Korea's distribution of high-quality counterfeit United States currency, that "North Korea is continuing to try to pass a supernote into the international financial system," and that the Department of the Treasury would soon introduce new currency with improved security features to protect against counterfeiting by the Government of North Korea.

(2) The Financial Action Task Force, an intergovernmental body whose purpose is to develop and promote national and international policies to combat money laundering and terrorist financing, has repeatedly—

(A) expressed concern at deficiencies in North Korea's regimes to combat money laundering and terrorist financing;

(B) urged North Korea to adopt a plan of action to address significant deficiencies in these regimes and the serious threat they pose to the integrity of the international financial system;

(C) urged all jurisdictions to apply countermeasures to protect the international financial system from ongoing and substantial money laundering and terrorist financing risks emanating from North Korea;

(D) urged all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with North Korea, including North Korean companies and financial institutions; and

(E) called on all jurisdictions to protect against correspondent relationships being used to bypass or evade countermeasures and risk mitigation practices, and take into account money laundering and terrorist financing risks when considering requests by North Korean financial institutions to open branches and subsidiaries in their jurisdiction.

(3) On March 7, 2013, the United Nations Security Council unanimously adopted Resolution 2094, which—

(A) welcomed the Financial Action Task Force's recommendation on financial sanctions related to proliferation, and its guidance on the implementation of sanctions;

(B) decided that Member States should apply enhanced monitoring and other legal measures to prevent the provision of financial services or the transfer of property that could contribute to activities prohibited by applicable United Nations Security Council resolutions; and

(C) called on Member States to prohibit North Korean banks from establishing or maintaining correspondent relationships with banks in their jurisdictions, to prevent the provision of financial services, if they have information that provides reasonable grounds to believe that these activities could contribute to activities prohibited by an applicable United Nations Security Council resolution, or to the evasion of such prohibitions.

(b) SENSE OF CONGRESS REGARDING THE DESIGNATION OF NORTH KOREA AS A JURISDICTION OF PRIMARY MONEY LAUNDERING CONCERN.—Congress—

(1) acknowledges the efforts of the United Nations Security Council to impose limitations on, and require enhanced monitoring of, transactions involving North Korean financial institutions that could contribute to sanctioned activities;

(2) urges the President, in the strongest terms, to immediately designate North Korea as a jurisdiction of primary money laundering concern, and to adopt stringent special measures to safeguard the financial system against the risks posed by North Korea's willful evasion of sanctions and its illicit activities; and

(3) urges the President to seek the prompt implementation by other states of enhanced monitoring and due diligence to prevent North Korea's misuse of the international financial system, including by sharing information about activities, transactions, and property that could contribute to activities sanctioned by applicable United Nations Security Council resolutions, or to the evasion of sanctions.

(c) DETERMINATIONS REGARDING NORTH KOREA.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 180 days after the date of the enactment of this Act, determine, in consultation with the Secretary of State and Attorney General, and in accordance with section 5318A of title 31, United States Code, whether reasonable grounds exist for concluding that North Korea is a jurisdiction of primary money laundering concern.

(2) SPECIAL MEASURES.—If the Secretary of the Treasury determines under this subsection that reasonable grounds exist for finding that North Korea is a jurisdiction of primary money laundering concern, the Secretary of the Treasury, in consultation with the Federal functional regulators, shall impose one or more of the special measures described in paragraphs (1) through (5) of section 5318A(b) of title 31, United States Code, with respect to the jurisdiction of North Korea.

(3) REPORT REQUIRED.—

(A) IN GENERAL.—If the Secretary of the Treasury determines that North Korea is a jurisdiction of primary money laundering concern, the Secretary of the Treasury shall, not later than 90 days after the date on which the Secretary makes such determination, submit to the appropriate congressional committees a report on the determination made under paragraph (1) together with the reasons for that determination.

(B) FORM.—A report or copy of any report submitted under this paragraph shall be submitted in unclassified form but may contain a classified annex.

SEC. 202. ENSURING THE CONSISTENT ENFORCEMENT OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS AND FINANCIAL RESTRICTIONS ON NORTH KOREA.

(a) FINDINGS.—Congress finds that—

(1) all states and jurisdictions are obligated to implement and enforce applicable United Nations Security Council resolutions fully and promptly, including by—

(A) blocking the property of, and ensuring that any property is prevented from being made available to, persons designated by the Security Council under applicable United Nations Security Council resolutions;

(B) blocking any property associated with an activity prohibited by applicable United Nations Security Council resolutions; and

(C) preventing any transfer of property and any provision of financial services that could contribute to an activity prohibited by applicable United Nations Security Council resolutions, or to the evasion of sanctions under such resolutions;

(2) all states and jurisdictions share a common interest in protecting the international financial system from the risks of money laundering and illicit transactions emanating from North Korea;

(3) the United States Dollar and the Euro are the world's principal reserve currencies, and the United States and the European Union are primarily responsible for the protection of the international financial system from these risks;

(4) the cooperation of the People's Republic of China, as North Korea's principal trading partner, is essential to the enforcement of applicable United Nations Security Council resolutions and to the protection of the international financial system;

(5) the report of the Panel of Experts established pursuant to United Nations Security Council Resolution 1874, dated June 11, 2013, expressed concern about the ability of banks in states with less effective regulators and those unable to afford effective compliance to detect and prevent illicit transfers involving North Korea;

(6) North Korea has historically exploited inconsistencies between jurisdictions in the interpretation and enforcement of financial regulations and applicable United Nations Security Council resolutions to circumvent sanctions and launder the proceeds of illicit activities;

(7) Amroggang Development Bank, Bank of East Land, and Tanchon Commercial Bank have been designated by the Secretary of the Treasury, the United Nations Security Council, and the European Union;

(8) Korea Daesong Bank and Korea Kwangson Banking Corporation have been designated by the Secretary of the Treasury and the European Union;

(9) the Foreign Trade Bank of North Korea has been designated by the Secretary of the Treasury for facilitating transactions on behalf of persons linked to its proliferation network, and for serving as “a key financial node”; and

(10) Daedong Credit Bank has been designated by the Secretary of the Treasury for activities prohibited by applicable United Nations Security Council resolutions, including the use of deceptive financial practices to facilitate transactions on behalf of persons linked to North Korea’s proliferation network.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should intensify diplomatic efforts, both in appropriate international fora such as the United Nations and bilaterally, to develop and implement a coordinated, consistent, multilateral strategy for protecting the global financial system against risks emanating from North Korea, including—

(1) the cessation of any financial services whose continuation is inconsistent with applicable United Nations Security Council resolutions;

(2) the cessation of any financial services to persons, including financial institutions, that present unacceptable risks of facilitating money laundering and illicit activity by the Government of North Korea;

(3) the blocking by all states and jurisdictions, in accordance with the legal process of the state or jurisdiction in which the property is held, of any property required to be blocked under applicable United Nations Security Council resolutions;

(4) the blocking of any property derived from illicit activity, from significant activities undermining cyber security, from the misappropriation, theft, or embezzlement of public funds by, or for the benefit of, officials of the Government of North Korea;

(5) the blocking of any property involved in significant activities undermining cyber security by the Government of North Korea, directly or indirectly, against United States persons, or the theft of intellectual property by the Government of North Korea, directly or indirectly from United States persons; and

(6) the blocking of any property of persons directly or indirectly involved in censorship or human rights abuses by the Government of North Korea.

SEC. 203. PROLIFERATION PREVENTION SANCTIONS.

(a) EXPORT OF CERTAIN GOODS OR TECHNOLOGY.—

(1) IN GENERAL.—Subject to section 207(a)(2)(C) of this Act, a license shall be required for the export to North Korea of any goods or technology subject to the Export Administration Regulations (part 730 of title 15, Code of Federal Regulations) without regard to whether the Secretary of State has designated North Korea as a country the government of which has provided support for acts of international terrorism, as determined by the Secretary of State under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2045), as continued in effect under the International Emergency Economic Powers Act.

(2) PRESUMPTION OF DENIAL.—A license for the export to North Korea of any goods or technology as described in paragraph (1) shall be subject to a presumption of denial.

(b) TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.—

(1) ARMS EXPORT CONTROL ACT PROHIBITIONS.—The prohibitions and restrictions described in section 40 of the Arms Export Control Act (22 U.S.C. 2780), and other provisions provided for in that Act, shall also apply to exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to the Government of North Korea without regard to whether or not North Korea is a country with respect to which subsection (d) of such section (relating to designation of state sponsors of terrorism) applies.

(2) FINANCIAL TRANSACTIONS.—Except as provided in section 207 of this Act and the North Korean Human Rights Act of 2004 (22 U.S.C. 7801 et seq.), the penalties provided for in section 2332d of title 18, United States Code, shall apply to a United States person that engages in a financial transaction with the Government of North Korea on or after the date of the enactment of this Act

to the same extent that such penalties apply to a United States citizen that commits an unlawful act described in section 2332d of title 18, United States Code.

(c) **TRANSACTIONS IN LETHAL MILITARY EQUIPMENT.**—

(1) **IN GENERAL.**—The President shall withhold assistance under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) to any country that provides lethal military equipment to, or receives lethal military equipment from, the Government of North Korea.

(2) **APPLICABILITY.**—The prohibition under this subsection with respect to a country shall terminate on the date that is 1 year after the date on which such country ceases to provide lethal military equipment to the Government of North Korea.

(3) **WAIVER.**—The President may, on a case-by-case basis, waive the prohibition under this subsection with respect to a country for a period of not more than 180 days, and may renew the waiver for additional periods of not more than 180 days, if the President determines and so reports to the appropriate congressional committees that it is vital to the national security interests of the United States to exercise such waiver authority.

SEC. 204. PROCUREMENT SANCTIONS.

(a) **IN GENERAL.**—Except as provided in this section, the United States Government may not procure, or enter into any contract for the procurement of, any goods or services from any designated person.

(b) **FAR.**—The Federal Acquisition Regulation issued pursuant to section 1303 of title 41, United States Code, shall be revised to require a certification from each person that is a prospective contractor that such person does not engage in any of the conduct described in subsection (a) or (b) of section 104. Such revision shall apply with respect to contracts in an amount greater than the simplified acquisition threshold (as defined in section 134 of title 41, United States Code) for which solicitations are issued on or after the date that is 90 days after the date of the enactment of this Act.

(c) **TERMINATION OF CONTRACTS AND INITIATION OF SUSPENSION AND DEBARMENT PROCEEDING.**—

(1) **TERMINATION OF CONTRACTS.**—Except as provided in paragraph (2), the head of an executive agency shall terminate a contract with a person who has provided a false certification under subsection (b).

(2) **WAIVER.**—The head of an executive agency may waive the requirement under paragraph (1) with respect to a person based upon a written finding of urgent and compelling circumstances significantly affecting the interests of the United States. If the head of an executive agency waives the requirement under paragraph (1) for a person, the head of the agency shall submit to the appropriate congressional committees, within 30 days after the waiver is made, a report containing the rationale for the waiver and relevant information supporting the waiver decision.

(3) **INITIATION OF SUSPENSION AND DEBARMENT PROCEEDING.**—The head of an executive agency shall initiate a suspension and debarment proceeding against a person who has provided a false certification under subsection (b). Upon determination of suspension, debarment, or proposed debarment, the agency shall ensure that such person is entered into the Governmentwide database containing the list of all excluded parties ineligible for Federal programs pursuant to Executive Order No. 12549 (31 U.S.C. 6101 note; relating to debarment and suspension) and Executive Order No. 12689 (31 U.S.C. 6101 note; relating to debarment and suspension).

(d) **CLARIFICATION REGARDING CERTAIN PRODUCTS.**—The remedies specified in subsections (a) through (c) shall not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of such Act (19 U.S.C. 2511(b)).

(e) **RULE OF CONSTRUCTION.**—Nothing in this subsection may be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under subsection (b).

(f) **EXECUTIVE AGENCY DEFINED.**—In this section, the term “executive agency” has the meaning given such term in section 133 of title 41, United States Code.

SEC. 205. ENHANCED INSPECTIONS AUTHORITIES.

(a) **REPORT REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the President, acting through the Secretary of Homeland Security, shall submit to the appropriate congressional committees, the Committee on Homeland Security of the House of Representatives, and the

Committee on Homeland Security and Governmental Affairs of the Senate, a report identifying foreign sea ports and airports whose inspections of ships, aircraft, and conveyances originating in North Korea, carrying North Korean property, or operated by the Government of North Korea are deficient to effectively prevent the facilitation of any of the activities described in section 104(a).

(b) ENHANCED SECURITY TARGETING REQUIREMENTS.—Not later than 180 days after the identification of any sea port or airport pursuant to subsection (a), the Secretary of Homeland Security shall, utilizing the Automated Targeting System operated by the National Targeting Center in U.S. Customs and Border Protection, require enhanced screening procedures to determine if physical inspections are warranted of any cargo bound for or landed in the United States that has been transported through such sea port or airport if there are reasonable grounds to believe that such cargo contains goods prohibited under this Act.

(c) SEIZURE AND FORFEITURE.—A vessel, aircraft, or conveyance used to facilitate any of the activities described in section 104(a) that comes within the jurisdiction of the United States may be seized and forfeited under chapter 46 of title 18, United States Code, or under the Tariff Act of 1930.

SEC. 206. TRAVEL SANCTIONS.

(a) ALIENS INELIGIBLE FOR VISAS, ADMISSION, OR PAROLE.—

(1) VISAS, ADMISSION, OR PAROLE.—An alien (or an alien who is a corporate officer of a person (as defined in subparagraph (B) or (C) of section 3(11))) who the Secretary of State or the Secretary of Homeland Security (or a designee of one of such Secretaries) knows, or has reasonable grounds to believe, is described in subsection (a)(1) or (b)(1) of section 104 is—

- (A) inadmissible to the United States;
- (B) ineligible to receive a visa or other documentation to enter the United States; and
- (C) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) CURRENT VISAS REVOKED.—

(A) IN GENERAL.—The issuing consular officer, the Secretary of State, or the Secretary of Homeland Security (or a designee of one of such Secretaries) shall revoke any visa or other entry documentation issued to an alien who is described in subsection (a)(1) or (b)(1) of section 104 regardless of when issued.

(B) EFFECT OF REVOCATION.—A revocation under subparagraph (A)—

- (i) shall take effect immediately; and
- (ii) shall automatically cancel any other valid visa or entry documentation that is in the alien's possession.

(b) EXCEPTION TO COMPLY WITH UNITED NATIONS HEADQUARTERS AGREEMENT.—Sanctions under subsection (a)(1)(B) shall not apply to an alien if admitting the alien into the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations.

SEC. 207. EXEMPTIONS, WAIVERS, AND REMOVALS OF DESIGNATION.

(a) EXEMPTIONS.—

(1) MANDATORY EXEMPTIONS.—The following activities shall be exempt from sanctions under section 104:

(A) Activities subject to the reporting requirements of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), or to any authorized intelligence activities of the United States.

(B) Any transaction necessary to comply with United States obligations under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed June 26, 1947, and entered into force on November 21, 1947, or under the Vienna Convention on Consular Relations, signed April 24, 1963, and entered into force on March 19, 1967, or under other international agreements.

(2) DISCRETIONARY EXEMPTIONS.—The following activities may be exempt from sanctions under section 104 as determined by the President:

(A) Any financial transaction the exclusive purpose for which is to provide humanitarian assistance to the people of North Korea.

(B) Any financial transaction the exclusive purpose for which is to import food products into North Korea, if such food items are not defined as luxury goods.

(C) Any transaction the exclusive purpose for which is to import agricultural products, medicine, or medical devices into North Korea, provided

that such supplies or equipment are classified as designated “EAR 99” under the Export Administration Regulations (part 730 of title 15, Code of Federal Regulations) and not controlled under—

- (i) the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.);
- (ii) the Arms Export Control Act (22 U.S.C. 2751 et seq.);
- (iii) part B of title VIII of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 6301 et seq.); or
- (iv) the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5601 et seq.).

(b) **WAIVER.**—The President may waive, on a case-by-case basis, the imposition of sanctions for a period of not more than one year, and may renew that waiver for additional periods of not more than one year, any sanction or other measure under section 104, 204, 205, 206, or 303 if the President submits to the appropriate congressional committees a written determination that the waiver meets one or more of the following requirements:

- (1) The waiver is important to the economic or national security interests of the United States.
- (2) The waiver will further the enforcement of this Act or is for an important law enforcement purpose.
- (3) The waiver is for an important humanitarian purpose, including any of the purposes described in section 4 of the North Korean Human Rights Act of 2004 (22 U.S.C. 7802).

(c) **REMOVALS OF SANCTIONS.**—The President may prescribe rules and regulations for the removal of sanctions on a person that is designated under subsection (a) or (b) of section 104 and the removal of designations of a person with respect to such sanctions if the President determines that the designated person has verifiably ceased its participation in any of the conduct described in subsection (a) or (b) of section 104, as the case may be, and has given assurances that it will abide by the requirements of this Act.

(d) **FINANCIAL SERVICES FOR CERTAIN ACTIVITIES.**—The President may promulgate regulations, rules, and policies as may be necessary to facilitate the provision of financial services by a foreign financial institution that is not controlled by the Government of North Korea in support of the activities subject to exemption under this section.

SEC. 208. REPORT ON THOSE RESPONSIBLE FOR KNOWINGLY ENGAGING IN SIGNIFICANT ACTIVITIES UNDERMINING CYBER SECURITY.

(a) **IN GENERAL.**—The President shall submit to the appropriate congressional committees a report on significant activities undermining cyber security conducted, or otherwise ordered or controlled, directly or indirectly, by the Government of North Korea, including—

- (1) the identity and nationality of persons that have knowingly engaged in, directed, or provided material support to significant activities undermining cyber security by the Government of North Korea;
- (2) the conduct engaged in by each person identified;
- (3) the extent to which a foreign government has provided material support to significant activities undermining cyber security conducted, or otherwise ordered or controlled by, the Government of North Korea; and
- (4) the efforts made by the United States to engage foreign governments to halt the capability of North Korea to conduct significant activities undermining cyber security.

(b) **SUBMISSION AND FORM.**—

(1) **SUBMISSION.**—The report required under subsection (a) shall be submitted not later than 90 days after the date of enactment of this Act, and every 180 days thereafter for a period not to exceed 3 years.

(2) **FORM.**—The report required under subsection (a) shall be submitted in an unclassified form, but may contain a classified annex.

SEC. 209. SENSE OF CONGRESS THAT TRILATERAL COOPERATION AMONG THE UNITED STATES, JAPAN, AND THE REPUBLIC OF KOREA IS CRUCIAL TO THE STABILITY OF THE ASIA-PACIFIC REGION.

(a) **FINDINGS.**—Congress finds the following:

- (1) The United States, Japan, and the Republic of Korea (South Korea) share the values of democracy, free and open markets, the rule of law, and respect for human rights.
- (2) The alliance relationship between the United States, Japan, and South Korea are critical to peace and security in the Asia-Pacific region.

(3) The United States, Japan, and South Korea are committed to continuing diplomatic efforts to ensure continued peace and stability in the Asia-Pacific region.

(4) On December 28, 2014, the United States, Japan, and South Korea finalized a trilateral military intelligence-sharing arrangement concerning the nuclear and missile threats posed by North Korea.

(5) The trilateral military intelligence-sharing arrangement reinforces and strengthens the commitment between the United States, Japan, and South Korea toward a Korean Peninsula free of nuclear weapons.

(b) SENSE OF CONGRESS.—It is the sense of Congress that North Korea’s nuclear and ballistic missile programs are of mutual concern to the United States, Japan, and South Korea and a trilateral military intelligence-sharing arrangement is essential to the security of each nation and the Asia-Pacific region.

SEC. 210. REPORT ON NUCLEAR PROGRAM COOPERATION BETWEEN NORTH KOREA AND IRAN.

(a) IN GENERAL.—The President shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate a report on cooperation between North Korea and Iran on their nuclear programs, including the identity of Iranian and North Korean persons that have knowingly engaged in or directed the provision of material support or the exchange of information between North Korea and Iran on their respective nuclear programs.

(b) SUBMISSION AND FORM.—

(1) SUBMISSION.—The report required under subsection (a) shall be submitted not later than 90 days after the date of enactment of this Act.

(2) FORM.—The report required under subsection (a) shall be submitted in an unclassified form, but may contain a classified annex.

TITLE III—PROMOTION OF HUMAN RIGHTS

SEC. 301. INFORMATION TECHNOLOGY.

Section 104 of the North Korean Human Rights Act of 2004 (22 U.S.C. 7814) is amended by inserting after subsection (c) the following new subsection:

“(d) INFORMATION TECHNOLOGY STUDY.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the President shall submit to the appropriate congressional committees a report setting forth a detailed plan for making unrestricted, unmonitored, and inexpensive, radio, Internet, and electronic mass communications available to the people of North Korea.

“(2) FORM.—The report required by paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.”

SEC. 302. REPORT ON NORTH KOREAN PRISON CAMPS.

(a) IN GENERAL.—The Secretary of State shall submit to the appropriate congressional committees a report describing, with respect to each political prison camp in North Korea to the extent information is available—

- (1) the camp’s estimated prisoner population;
- (2) the camp’s geographical coordinates;
- (3) the reasons for confinement of the prisoners;
- (4) the camp’s primary industries and products, and the end users of any goods produced in such camp;
- (5) the natural persons and agencies responsible for conditions in the camp;
- (6) the conditions under which prisoners are confined, with respect to the adequacy of food, shelter, medical care, working conditions, and reports of ill-treatment of prisoners; and
- (7) imagery, to include satellite imagery of each such camp, in a format that, if published, would not compromise the sources and methods used by the intelligence agencies of the United States to capture geospatial imagery.

(b) FORM.—The report required under subsection (a) may be included in the first report required to be submitted to Congress after the date of the enactment of this Act under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) (relating to the annual human rights report).

SEC. 303. REPORT ON PERSONS WHO ARE RESPONSIBLE FOR SERIOUS HUMAN RIGHTS ABUSES OR CENSORSHIP IN NORTH KOREA.

(a) IN GENERAL.—The Secretary of State shall submit to the appropriate congressional committees a report that contains an identification of each person the Secretary determines to be responsible for serious human rights abuses or censorship in North Korea and a description of such abuses or censorship engaged in by such

person. The report shall include a description of actions taken by the Department of State to implement or support the recommendations of the Commission of Inquiry's Report on Human Rights in the Democratic People's Republic of North Korea, including efforts to press China and other countries to implement Commission recommendations.

(b) CONSIDERATION.—In preparing the report required under subsection (a), the Secretary of State shall give due consideration to the findings of the United Nations Commission of Inquiry on Human Rights in North Korea, and shall make specific findings with respect to the responsibility of Kim Jong Un, and of each natural person who is a member of the National Defense Commission of North Korea, or the Organization and Guidance Department of the Workers' Party of Korea, for serious human rights abuses and censorship.

(c) DESIGNATION OF PERSONS.—The President shall designate under section 104(a) any person listed in the report required under subsection (a) as responsible for serious human rights abuses or censorship in North Korea.

(d) SUBMISSION AND FORM.—

(1) SUBMISSION.—The report required under subsection (a) shall be submitted not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter for a period not to exceed 3 years, shall be included in each report required under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) (relating to the annual human rights report).

(2) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex. The Secretary of State shall also publish the unclassified part of the report on the Department of State's Web site.

TITLE IV—GENERAL AUTHORITIES

SEC. 401. SUSPENSION OF SANCTIONS AND OTHER MEASURES.

(a) IN GENERAL.—Any sanction or other measure provided for in title I (or any amendment made by title I) or title II may be suspended for up to 365 days upon certification by the President to the appropriate congressional committees that the Government of North Korea has—

(1) verifiably ceased its counterfeiting of United States currency, including the surrender or destruction of specialized materials and equipment used for or particularly suitable for counterfeiting;

(2) taken significant steps toward financial transparency to comply with generally accepted protocols to cease and prevent the laundering of monetary instruments;

(3) taken significant steps toward verification of its compliance with United Nations Security Council Resolutions 1695, 1718, 1874, 2087, and 2094;

(4) taken significant steps toward accounting for and repatriating the citizens of other countries abducted or unlawfully held captive by the Government of North Korea or detained in violation of the 1953 Armistice Agreement;

(5) accepted and begun to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid;

(6) provided credible assurances that it will not support further acts of international terrorism;

(7) taken significant and verified steps to improve living conditions in its political prison camps; and

(8) made significant progress in planning for unrestricted family reunification meetings, including for those individuals among the two million strong Korean-American community who maintain family ties with relatives in North Korea.

(b) RENEWAL OF SUSPENSION.—The suspension described in subsection (a) may be renewed for additional consecutive periods of 180 days upon certification by the President to the appropriate congressional committees that the Government of North Korea has continued to comply with the conditions described in subsection (a) during the previous year.

SEC. 402. TERMINATION OF SANCTIONS AND OTHER MEASURES.

Any sanction or other measure provided for in title I (or any amendment made by title I) or title II shall terminate on the date on which the President determines and certifies to the appropriate congressional committees that the Government of North Korea has met the requirements of section 401, and has also—

(1) completely, verifiably, and irreversibly dismantled all of its nuclear, chemical, biological, and radiological weapons programs, including all programs for

the development of systems designed in whole or in part for the delivery of such weapons;

(2) released all political prisoners, including the citizens of North Korea detained in North Korea's political prison camps;

(3) ceased its censorship of peaceful political activity;

(4) taken significant steps toward the establishment of an open, transparent, and representative society;

(5) fully accounted for and repatriated all citizens of all nations abducted or unlawfully held captive by the Government of North Korea or detained in violation of the 1953 Armistice Agreement; and

(6) agreed with the Financial Action Task Force on a plan of action to address deficiencies in its anti-money laundering regime and begun to implement this plan of action.

SEC. 403. AUTHORITY TO CONSOLIDATE REPORTS.

Any or all reports required to be submitted to appropriate congressional committees under this Act or any amendment made by this Act that are subject to a deadline for submission consisting of the same unit of time may be consolidated into a single report that is submitted to appropriate congressional committees pursuant to such deadline.

SEC. 404. REGULATIONS.

(a) **IN GENERAL.**—The President is authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this Act (which may include regulatory exceptions), including under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704).

(b) **RULE OF CONSTRUCTION.**—Nothing in this Act or any amendment made by this Act shall be construed to limit the authority of the President pursuant to an applicable Executive order or otherwise pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

SEC. 405. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

SUMMARY AND PURPOSE

H.R. 757, the North Korea Sanctions Enforcement Act (NKSEA), is the first comprehensive sanctions legislation directed at North Korea. It is intended to address North Korea's nuclear, ballistic missile, and other WMD threats; its counterfeiting of U.S. currency and other illicit activities; its misuse of the financial system through money laundering; its severe human rights abuses; its cyber activities; and other activities that violate applicable U.N. Security Council resolutions, including arms trafficking, WMD proliferation, and luxury goods imports. As of 2014, no comprehensive sanctions legislation exists to address these threats.

The purpose of this legislation is to compel the Government of North Korea to verifiably suspend, and ultimately dismantle, its nuclear weapons and ballistic missile programs, including, but not limited to, the cessation of all uranium enrichment and plutonium-related activities. Through the application of broad-based sanctions, it is also intended to deprive North Korea of the resources it requires to develop other unconventional weapons and ballistic missiles, acquire destabilizing conventional weapons that threaten U.S. allies in the region, support terrorism in the region and across the globe, and engage in the systematic oppression of the people of North Korea. Finally, it is intended to force the Government of North Korea to accept a degree of transparency that will allow for the verification of its commitments, peaceful coexistence with its neighbors, including South Korea, and an end to the repression of the North Korean people.

H.R. 757 also reverses, in part, the relaxation of sanctions by President Bush in 2008, in response to an abortive 2007 agreement by North Korea to verifiably dismantle its nuclear weapons program. Since the relaxation of these sanctions, North Korea has violated its commitments to dismantle its nuclear program, and has carried out multiple ballistic missile tests and two nuclear weapons tests.

H.R. 757 would apply sanctions against the Government of North Korea with the objectives of compelling the regime to change its policies and behavior that threatens the United States and the people of North Korea; and deny the regime the necessary resources to continue these policies.

In addition to advancing the aforementioned U.S. foreign policy objectives, H.R. 757 supports the interests of U.S. treaty allies whose cooperation will be essential to achieving U.S. foreign policy objectives. These interests include the return of allied nations' abducted citizens and unlawfully detained prisoners of war, and allowing for unrestricted reunions of separated families.

H.R. 757 directly targets the foreign assets and income sources of the North Korean government and its senior officials by blocking those assets as they pass through the dollar-based financial system. It also targets North Korea indirectly, by sanctioning against third-party entities that facilitate sanctioned activities on behalf of the Government of North Korea.

BACKGROUND AND NEED FOR LEGISLATION

North Korea's nuclear, ballistic missile, and chemical weapons programs, as well as its cyber activities pose a significant and rapidly increasing threat to the United States and its allies in Northeast Asia. Its suspected proliferation of WMD technologies to Iran and Syria, and its suspected supply of advanced weapons systems to terrorist organizations, both pose a threat to the United States, its allies in the Middle East, and other nations.

Halting and dismantling North Korea's nuclear, ballistic missile, and other WMD programs, and ending its capacity to proliferate weapons and WMD technology to terrorists and state sponsors of terrorism, are vital U.S. national security interests.

Legislative Background

The collapse of North Korea's industrial economy in the early 1990s left it highly dependent on external sources of hard currency to sustain a population of approximately 23 million, a mechanized military of 1 million men and women, the military-industrial sector that supplies it, its WMD programs, and luxury items imported for senior regime officials. Because of the impracticality of transferring large sums of cash in bulk, North Korea continues to rely on the international financial system, and maintains large offshore deposits in China and Europe.

In September 2005, the Treasury Department invoked the authority of Section 311 of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, and blocked the correspondent accounts of Banco Delta Asia. Banco Delta Asia is a small Macau-based bank that, according to the Treasury Department, acted as "a willing pawn" of North Korean agents laundering the proceeds of illicit activity, including the counterfeiting of U.S. currency. Treasury's designation discon-

nected Banco Delta Asia from the international dollar-based financial system and caused a run on the bank. The Government of Macau intervened and blocked \$25 million in North Korean deposits to prevent the bank from collapse. Indirectly, the action caused other banks to block other North Korean accounts, or to reject North Korean transactions.

The effect on the regime's finances was devastating. Seventeen months after the sanction was imposed on Banco Delta, North Korea agreed to dismantle its nuclear weapons program, but first insisted that the United States return the \$25 million in blocked North Korean funds, effectively nullifying the Section 311 sanction as it applied to North Korea.

In the intervening years, the Treasury Department has not used Section 311 against North Korean entities or funds. It has blocked the funds of North Korean individuals and trading companies under Executive Order 13,382 (June 25, 2005) and Executive Order 13,551 (Aug. 31, 2010), as authorized under the International Emergency Economic Powers Act of Act, Pub. L. No. 95-223, title II, as amended. Only recently in March 2013, did it block the property of two North Korean banks, the Foreign Trade Bank and Daedong Credit Bank. It has not, however, applied broader sanctions to the Government of North Korea, such as designating it as a primary money laundering concern under Section 311. The Secretary of the Treasury has previously applied this designation to the governments of Nauru, Ukraine, Burma, and Iran.

No existing comprehensive sanctions legislation targets North Korea's unique threats and vulnerabilities. The Iran, North Korea, and Syria Nonproliferation Act, Pub. L. No. 109-353, reinforces restrictions on exporting WMD and related technologies to North Korea, but does not address North Korea's acquisition of WMD technologies and components from third countries, does not address other significant U.S. interests with respect to North Korea, and does not exploit North Korea's vulnerability to sanctions against its links to the global financial system.

Since 2005, North Korea has diversified and concealed its financial lifelines, but it remains dependent on its access to the international financial system. The vast majority of international transactions are denominated in dollars, the world's reserve currency, and nearly all dollar-denominated transactions are cleared through U.S.-based banks regulated by the Treasury Department. North Korea continues to use the U.S. dollar for many of its international and domestic business transactions, and both legitimate and counterfeit U.S. dollars circulate widely inside North Korea. Although North Korea hides its dollar transactions within the dollar-based financial system using false names, shell companies, and other deceptive practices, determined financial investigators have defeated similar tactics by other rogue states, terrorists, and drug-trafficking organizations.

North Korea's reliance on the dollar allows U.S. sanctions to reach North Korean assets in two ways. First, if North Korea transfers or spends dollar-denominated assets, Treasury can block them as they pass through dollar-clearing banks in New York. Second, banks that clear North Korea's non-dollar transactions or convert its dollars to bulk cash, and businesses that facilitate barter transactions, still need access to dollar-clearing banks for the ma-

majority of their non-North Korea business. H.R. 757 threatens the access of those banks and businesses to the dollar system. Few banks or businesses would be willing to take that risk to help North Korea evade Treasury sanctions.

North Korea's Nuclear Program

North Korea's nuclear program dates back to the late 1950s, when it signed a nuclear cooperation agreement with the Soviet Union. It began to operate a small research reactor in 1967, and completed a second, 5-megawatt reactor at Yongbyon in 1986, which could produce approximately 6 kilograms of plutonium annually. After this point, U.S. satellite imagery showed a steady expansion of North Korea's nuclear program, including the construction of a reprocessing plant, a 50-megawatt reactor at Yongbyon, and a 200-megawatt reactor at Daecheon, although neither of these larger reactors is believed to have been completed.

U.S. satellites observed that these reactors were not connected to North Korea's electrical grid, and that North Korea was conducting tests to separate plutonium from the 5-megawatt reactor's spent fuel. U.S. intelligence agencies concluded that the reactors were part of a nuclear weapons program.

The Soviet Union pressured North Korea to join the Nuclear Non-Proliferation Treaty (NPT) in 1985, but North Korea did not allow inspections of the reactor until 1992. North Korea has only allowed intermittent inspections of its nuclear facilities since then, and U.S. intelligence agencies are uncertain of how much fissile plutonium North Korea has reprocessed.

In 2002, U.S. diplomats visited Pyongyang to confront the Government of North Korea with evidence that it was pursuing a parallel nuclear weapons program through the enrichment of uranium, in violation of the 1994 Agreed Framework. North Korean diplomats admitted the program's existence at the time, but the Government of North Korea subsequently denied it. The Bush Administration halted deliveries of fuel oil under the Agreed Framework. North Korea expelled IAEA inspectors and restarted the reactor, and the 1994 Agreed Framework collapsed.

On October 9, 2006, North Korea conducted its first nuclear test, in Kilju County, North Hamgyeong Province, in northeastern North Korea. In response to the test, the U.N. Security Council approved Resolution 1718, which prohibited North Korea's nuclear, missile, chemical and biological weapons programs; prohibited North Korea from selling or purchasing most arms and related material (except for imports of light weapons); and prohibited North Korea from importing luxury goods.

In September 2007, Israeli warplanes bombed a nuclear reactor in Al Kibar, Syria. A video produced and released by the Central Intelligence Agency cited evidence that the design of the Al Kibar reactor was based on the design of the Yongbyon reactor in North Korea, and that North Korean nuclear scientists had assisted with the reactor's design and construction.

On May 25, 2009, North Korea conducted a second nuclear weapons test. The United Nations responded with Security Council Resolution 1874, which tightened sanctions under Resolution 1718 and imposed new shipping sanctions intended to curb North Korean proliferation.

In November 2010, North Korea revealed the existence of an advanced uranium enrichment program at an underground facility at Yongbyon, which contained a cascade of 3,000 centrifuges based on a Pakistani design obtained from the A.Q. Khan network. The revelation confirmed longstanding suspicions that North Korea was pursuing a parallel nuclear weapons program, a program that likely dated back to the life span of the 1994 Agreed Framework.

In May of 2012, North Korea amended its constitution to declare itself “a nuclear state.”

On February 12, 2013, North Korea conducted a third nuclear test. The New York Times quoted an unidentified Obama Administration official, who suggested that North Korea may have cooperated with the Government of Iran in conducting the nuclear test. The U.N. Security Council responded with Resolution 2094, which tightened financial sanctions. It imposed additional financial due diligence requirements on governments and banks to block, or prevent the provision to North Korea of, assets that could be used for North Korea’s WMD programs.

On March 30, 2014, North Korea threatened to conduct an unspecified “new form” of nuclear test. As of 2014, North Korea is believed to possess between four and eight plutonium-based nuclear weapons, and an unknown number of uranium-based weapons.

North Korea’s Ballistic Missile Program

North Korea continues to develop multiple types of ballistic missiles that could threaten the Republic of Korea, Japan, and the United States. North Korea is also believed to have supplied ballistic missile technology to Iran, Syria, and Yemen. According to David Kay, the head of the Iraq Survey Group, the Government of Iraq paid the Government of North Korea \$10 million to supply it with Nodong-1 missiles; however, the 2003 U.S. invasion aborted the delivery of the missiles.

North Korea has carried out multiple tests of its short-range ballistic missiles since the 1990s. Although the United States has since deployed PAC-3 Patriot and Standard-3 missiles to protect U.S. allies and U.S. forces in the region, North Korea recently tested a 300-millimeter multiple-launch rocket system that may be capable of carrying chemical warheads. North Korea first tested its intermediate-range missile in 1998, directly overflying Japan with its trajectory.

North Korea is also developing long-range missiles capable of striking the United States. The Taepodong-2 missile, which North Korea has tested five times between 2006 and 2012, may have sufficient range to reach the West Coast of the United States. The Unha-3, which was tested unsuccessfully in April 2012 and successfully in December 2012, has demonstrated a capability to launch a satellite into space and hit targets more than 6,000 miles away, including the West Coast of the United States. Another possible intercontinental ballistic missile system, the KN-08, is not known to have been tested.

North Korea’s Chemical and Biological Weapons Programs

North Korea’s chemical weapons program dates back to the 1950s, and was established with Soviet and Chinese assistance. The North Korean military is believed to have produced blood, blis-

ter, nerve, and choking agents. Former North Korean prison camp guards have alleged that they witnessed chemical agents being tested on prisoners, including an entire family consisting of a father, mother, son, and daughter who were gassed at Camp 22, near the city of Hoeryong, as part of an experiment.

In 2012, a United Nations Panel of Experts published photographs of chemical protective suits, gas masks, and chemical indicator ampoules that were in transit from North Korea to Syria. Open-source media reports alleged that in 2013, North Korea continued to provide assistance to Syria's chemical weapons program.

North Korea is also believed to possess biological weapons, including anthrax. In 1998, U.S. military personnel in the Republic of Korea were required to be vaccinated against anthrax.

North Korea's Cyber Threat

For years, the United States and our allies have been rightly concerned about the threat from North Korea's nuclear and missile programs. Now, the Kim regime has added a new weapon to its arsenal: cyberattacks. The state-sanctioned cyber-attack on Sony Pictures reminded us that North Korea's weapons are not for show; they are a direct threat to our security.

North Korea's growing cyber capability emerged most starkly in 2013. South Korea suffered a series of cyberattacks that damaged its commercial and media networks, and disrupted banking services. Despite limited Internet capacity in the North Korea, defectors and security experts point to an elite cyber warfare unit known as "Bureau 121" as the source of these attacks.

Last year's cyber-attack is estimated to have cost Sony hundreds of millions of dollars in damage to the company and its assets. This was not an act of "vandalism" but a state-sanctioned attack that is of significant concern. Many are wonder that if North Korea can do to a movie company, how vulnerable is the rest of our critical infrastructure, such as our energy grid?

North Korea's Attacks and Threats Against South Korea

North Korea's foreign policy objective continues to be to reunify the Korean Peninsula under the rule of the Government of North Korea. It has repeatedly expressed its disapproval of actions by the governments of South Korea, Japan, and the United States by threatening to turn their capital cities into a "sea of fire," or similar threats. North Korea has also used its official state media to threaten foreign newspapers, government officials, and human rights activists.

On March 26, 2010, a Republic of Korea naval corvette, the ROKS *Cheonan*, exploded and sank near Baekryeong Island in the Yellow Sea, with the loss of 44 personnel. An international Civilian-Military Investigation Group was convened, and concluded that the ROKS *Cheonan* was destroyed by a torpedo fired by a North Korean submarine. North Korea has denied responsibility for the attack.

On November 23, 2010, North Korean artillery in South Hwanghae Province shelled a village on Yeonpyeong Island, South Korea, killing two civilians and two Republic of Korea Marines. North Korea admitted responsibility for the attack, but blamed it

on South Korean live-fire exercises in the waters near Yeonpyeong Island.

North Korea's Sponsorship of Terrorism

President Bush removed North Korea from the list of state sponsors of terrorism on October 11, 2008. Since this date, multiple North Korean agents—including two Korean Peoples' Army officers attached to the Reconnaissance Bureau of the Workers' Party of Korea—have been convicted in South Korean courts of attempting to assassinate North Korean exiles, planning to assassinate South Korean military officers, and kidnapping one U.S. resident, who is believed to have died in North Korea. North Korean agents are suspected of other completed and attempted assassinations of human rights activists in China.

North Korea has long harbored terrorists of the Japanese Red Army, recently assisted Hezbollah in constructing a network of tunnels and bunkers, and according to published reports, supplied weapons to the Liberation Tigers of Tamil Eelam.

In 2009, North Korean weapons shipments were intercepted in Bangkok, Thailand, and Dubai, United Arab Emirates. The Foreign Minister of Israel has publicly stated that the intended end users of these weapons included Hamas and Hezbollah, both designated terrorist organizations. The weapons intercepted in Bangkok included advanced man-portable surface-to-air missiles.

According to a 2014 United Nations Panel of Experts, in 2009, the Israeli Navy intercepted a third shipment of similar weapons in transit from Iran to Syria, although no further information is available on the intended end user of the weapons. The same 2014 U.N. report found that the fuses of 333-millimeter rockets fired into Israel by Hamas were consistent with similar rocket fuses of North Korean manufacture.

North Korea's Human Rights Abuses

In February of 2014, a Commission of Inquiry appointed by the United Nations Human Rights Council found that the Government of North Korea was responsible for crimes against humanity. The United States and other nations have important humanitarian interests in deterring, sanctioning, and ending these abuses.

In its final report, the Commission of Inquiry recommended targeted sanctions against persons responsible for these abuses. Correspondence from the Commission Chairman Michael Kirby to Kim Jong Un calls on Kim Jong Un to investigate the individual responsibility of North Korean officials for these abuses, "to render accountable all those, including possibly yourself, who may be responsible for crimes against humanity."

These abuses documented by the Commission of Inquiry include the operation of a system of political prison camps that contain as many as 120,000 men, women, and children, and in which an estimated 400,000 North Koreans have already died. Witnesses reports that prisoners in the camps are provided inadequate food and medical care, and that prisoners suffer high mortality rates from disease and starvation. Working conditions are severe and unsafe, and guards frequently kill or torture prisoners.

The report finds evidence that North Korea targets the children of refugee women repatriated from China with forced abortions and

infanticide, and cites the testimony of a woman who was forced to drown her own baby in a bucket.

It finds that the Government of North Korea has deprived many of its citizens of food, even as it expended large sums of money on WMD programs, conventional weapons, luxury items, and leisure facilities for senior regime officials. It further finds that in the 1990s, the Government of North Korea impeded the delivery of food aid to starving North Koreans during a famine. Estimates for the death toll from the famine vary between 600,000 and 2.5 million people.

North Korea is believed to have kidnapped 82,959 South Koreans during the Korean War; an additional 3,721 South Koreans since the Korean War; between 12 and 100 Japanese; approximately 200 Chinese, most of them ethnic Koreans who assisted North Korean refugees; and citizens of Lebanon, Thailand, Romania, and possibly other countries.

Negotiations

Repeated diplomatic efforts by the United States and other governments have failed to dismantle North Korea's nuclear program. Under the Agreed Framework of 1994, North Korea initially shut down the 5-megawatt reactor, allowed inspectors to monitor NPT safeguards, and agreed to its eventual dismantlement in exchange for aid, including heavy fuel oil and the construction of two light-water reactors in Sinpo County, South Hamgyeong Province, along North Korea's East Coast.

In 1997, the Board of Governors of the International Atomic Energy Agency (IAEA) reported that its inspectors were still unable to verify North Korea's initial declaration, and that North Korea still had not complied with NPT safeguards. North Korea also prevented IAEA inspectors from taking samples and installing monitoring devices.

In 1998, North Korea tested a Taepodong-1 intermediate range ballistic missile, whose trajectory passed over Japan. Congress also became concerned about intelligence that North Korea was pursuing a parallel uranium-enrichment program.

Diplomatic efforts resumed in 2003, when the first Six-Party Talks were held. The nations represented were the United States, China, South Korea, Japan, Russia, and North Korea. Talks made little progress until September 2005, when the six parties agreed to a Joint Statement affirming North Korea's commitment to the complete, verifiable, and irreversible dismantlement of its nuclear programs. Within a day of signing the agreement, however, North Korea stated that its commitment was contingent on the completion of the light-water reactors, a term that was not mentioned in the Joint Statement and which would take several years and a substantial financial investment to fulfill.

On February 13, 2007, the Bush Administration and North Korea reached a Second Agreed Framework, under which North Korea would shut down the Yongbyon reactor in exchange for a delivery of 1 million tons of heavy fuel oil. Eventually, North Korea would declare all of its nuclear weapons programs and implement the Joint Statement, dismantling its nuclear weapons program permanently.

The agreement began to break down within months. North Korea delayed the shut-down of its reactor until it received \$25 million in blocked funds from Banco Delta Asia. In September, Israeli warplanes destroyed a nuclear reactor in Syria that had been built with North Korean assistance. North Korea failed to submit timely and accurate declarations of its nuclear weapons programs, and continued to deny the existence of its uranium-enrichment program, even after submitting documents and samples of aluminum tubing that contained traces of enriched uranium.

Although the Bush Administration relaxed sanctions against North Korea in 2008 and removed the Government of North Korea from the list of state sponsors of terrorism, North Korea refused to implement a verification protocol and declared that it would never relinquish its nuclear weapons programs.

North Korea has not attended the Six-Party Talks since April 2009, although the United States has held bilateral talks with North Korea since then. The Obama Administration has since described its policy toward North Korea as one of “strategic patience,” applying gradual and incremental economic and financial pressure until the Government of North Korea is prepared to negotiate its disarmament.

On February 29, 2012, the Obama Administration reached an agreement with North Korea to freeze North Korea’s ballistic missile programs in exchange for 500,000 tons of food aid. Two weeks later, North Korea announced a new “space launch vehicle” test.

On May 13, 2014, U.S. negotiator Glyn Davies announced that the United States would accept “reversible steps” in the early stages of an agreement to freeze, shut down, and dismantle North Korea’s nuclear programs. Davies did not specify that the United States was willing to offer in exchange for those steps, and North Korea has offered no public statement suggesting that it is interested in such an agreement.

Enforcement of U.N. Security Council Sanctions

Reports from the United Nations Panel of Experts cite numerous examples of nations failing to enforce U.N. Security Council Sanctions.

In particular, the People’s Republic of China has repeatedly hosted North Korean individuals and entities known to be involved in the proliferation of WMD components. North Korean shipments of arms and related materiel, WMD components, and luxury items have repeatedly been shipped through the ports of Dalian, Shanghai, and Hong Kong without inspection. China has repeatedly allowed ballistic missile components bound for North Korea, or bound from North Korea to Iran, to transit its airspace, its ports, and its airports. One state-owned company, Hubei Sanjiang Space Wanshan Special Vehicle Company sold North Korea six ballistic missile transporter-erector-launcher chassis, which it later claimed were “lumber transporters.” In one case, a U.N.-sanctioned North Korean machinery company was openly marketing its products at a Chinese trade fair.

Targeted financial sanctions directed at banks, business, and shipping companies that facilitate North Korea’s violation of U.N. Security Council Resolutions could be an effective way to deter the violation of those resolutions. Ports that fail to meet their inspec-

tion obligations under Resolution 1874 would be targeted for additional inspections of cargo originating in those ports.

HEARINGS

On January 13, 2015, the full committee met and received testimony on “The North Korean Threat: Nuclear, Missiles, and Cyber” (The Honorable Sung Kim, Special Representative for North Korea Policy and Deputy Assistant Secretary of State for Korea and Japan, U.S. Department of State; The Honorable Daniel Glaser, Assistant Secretary for Terrorist Financing, Office of Terrorism and Financial Intelligence, U.S. Department of the Treasury; and Brigadier General Gregory J. Touhill (USAF, retired), Deputy Assistant Secretary for Cybersecurity Operations and Programs, U.S. Department of Homeland Security).

During the 113th Congress, the committee held three hearings related to the content of this bill:

March 5, 2013, full committee hearing on “North Korea’s Criminal Activities: Financing the Regime” (David Asher, Ph.D., Non-Resident Senior Fellow, Center for a New American Security, and Former Senior Adviser, East Asian and Pacific Affairs, and Coordinator, North Korea Working Group, U.S. Department of State; Sung-Yoon Lee, Ph.D., Assistant Professor in Korean Studies, The Fletcher School of Law and Diplomacy, Tufts University; The Honorable Joseph R. DeTrani, President, Intelligence and National Security Alliance, and Former Director, National Counter Proliferation Center, Office of the Director of National Intelligence);

April 11, 2013, joint hearing of the Subcommittee on Asia and the Pacific; Subcommittee on Terrorism, Nonproliferation, and Trade; and Subcommittee on the Middle East and North Africa, on “Breaking the Iran, North Korea, and Syria Nexus” (The Honorable R. James Woolsey, Chairman, Foundation for Defense of Democracies and Former Director of the Central Intelligence Agency; Mr. Henry D. Sokolski, Executive Director, Nonproliferation Policy Education Center, and Former Deputy for Nonproliferation Policy, U.S. Department of Defense; Mr. David Albright, Founder and President, Institute for Science and International Security; and Ray Takeyh, Ph.D. Senior Fellow for Middle Eastern Studies, Council on Foreign Relations); and

March 26, 2014, the Subcommittee on Asia and the Pacific hearing on “The Shocking Truth about North Korean Tyranny” (Ms. Grace Jo, Survivor of North Korean human rights abuses; Mr. Greg Scarlatou, Executive Director, Committee for Human Rights in North Korea; Mr. Bruce Klingner, Senior Research Fellow, Northeast Asia, The Heritage Foundation).

COMMITTEE CONSIDERATION

On February 27, 2015, the House Foreign Affairs Committee marked up the bill H.R. 757 pursuant to notice, in open session. Three amendments were considered *en bloc* and agreed to by voice vote. The bill, as amended, was agreed to by voice vote, and by unanimous consent was ordered favorably reported to the House as a single amendment in the nature of a substitute.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House Rule XIII, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report, particularly the “Summary and Purpose,” “Background and Need for Legislation,” and “Section-by-Section Analysis” sections.

NEW BUDGET AUTHORITY, TAX EXPENDITURES, AND FEDERAL MANDATES

In compliance with clause 3(c)(2) of House Rule XIII and the Unfunded Mandates Reform Act (P.L. 104–4), the committee adopts as its own the estimate of new budget authority, entitlement authority, tax expenditure or revenues, and Federal mandates contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 16, 2015.

Hon. EDWARD R. ROYCE, *Chairman,*
Committee on Foreign Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 757, the North Korea Sanctions Enforcement Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte, who can be reached at 226–2840.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure

cc: Honorable Eliot L. Engel
Ranking Member

H.R. 757—North Korea Sanctions Enforcement Act of 2015

As ordered reported by the House Committee on Foreign Affairs on February 27, 2015.

H.R. 757 would expand existing sanctions against North Korea. CBO estimates that implementing the bill would cost \$10 million over the 2016–2020 period, assuming appropriation of the necessary amounts. Pay-as-you-go procedures apply to this legislation because it would affect direct spending and revenues; however, CBO estimates that those effects would not be significant.

Provisions of H.R. 757 would increase administrative costs of the Department of State and the Department of the Treasury. Based on information from the Administration, CBO estimates that the departments would hire 10 additional employees to implement the bill and would require additional appropriations averaging \$2 million a year over the 2016–2020 period.

Sanctions required under the bill would probably increase the number of people who would be denied a visa by the Secretary of State. Most visa fees are retained by the department and spent without further appropriation, but some fees are deposited in the Treasury as revenues. CBO estimates that implementing those sanction provisions would affect very few people, however; thus, they would have an insignificant budgetary effect.

Because the bill would expand the types of prohibited activities involving North Korea that are subject to civil and criminal penalties under current law, it could increase revenues and direct spending from the collection of those penalties; however, CBO estimates that the net budgetary effect of any additional penalties would be negligible for each year.

H.R. 757 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. The bill would impose private-sector mandates, as defined in UMRA, on entities that export goods or services sent as nonhumanitarian assistance. Specifically, it would prohibit entities in the United States from exporting defense-related items, data, and services that are sent as assistance to countries that provide military equipment to North Korea. The bill also would impose a mandate by requiring the President to revoke licenses for transactions that lack financial controls to ensure that such transactions will not facilitate the proliferation of weapons or human rights abuses by the North Korean government. The cost of the mandates would be the forgone net revenues from exports or transactions prohibited by the bill. Because of the small number of entities that would be affected and the broad scope of existing U.S. sanctions against North Korea, CBO expects that the aggregate cost of the mandates would fall below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2015, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sunita D'Monte, Pamela Greene, and Matthew Pickford (for federal costs) and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

DIRECTED RULE MAKING

Pursuant to clause 3(c) of House Rule XIII, as modified by section 3(i) of H. Res. 5 during the 114th Congress, the committee notes that this bill contains no directed rule-making provisions.

NON-DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c) of House Rule XIII, as modified by section 3(g)(2) of H. Res. 5 during the 114th Congress, the committee states that no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

The Act is intended to deprive North Korea of the resources it requires to further test, develop, produce and weaponize nuclear weapons; develop and export other unconventional weapons and ballistic missiles; engage in destabilizing activities within the region and across the globe; and engage in the systematic suppression of the people of North Korea. Performance goals associated with these objectives include, but are not limited to the following:

- A verifiable decrease in North Korea’s ability to fund its nuclear weapons program; and
- A verifiable decrease in North Korea’s ability to fund and export its unconventional weapons programs, ballistic missiles and related technology programs, destabilizing types and amounts of conventional weapons, and support for regional destabilization.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 757 does not apply to terms and conditions of employment or to access to public services or accommodations within the Legislative Branch.

NEW ADVISORY COMMITTEES

H.R. 757 does not establish or authorize any new advisory committees.

EARMARK IDENTIFICATION

H.R. 757 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of House Rule XXI.

SECTION-BY-SECTION ANALYSIS

TITLE I—INVESTIGATIONS, PROHIBITED CONDUCT, AND PENALTIES

Section 101. This section states that it is the policy of the United States to vigorously pursue sanctions against the North Korean government in order to peacefully disarm Pyongyang.

Section 102. This section mandates that the President investigate sanctionable conduct involving North Korea upon the receipt of credible information that a person or entity has engaged in such activity. Among other things, sanctionable conduct may include proliferation of weapons of mass destruction, arms related materials, luxury goods, and counterfeit goods. This provision would prevent any Administration from ignoring destructive North Korean behavior.

Section 103. This section requires the Administration to regularly brief Congress on North Korean assets and transactions, so that Congress can oversee the enforcement of sanctions and ensure that North Korea is cut off from its offshore assets and income.

Section 104. This section describes the conduct and entities subject to “blocking sanctions” (a prohibition on any transfers in financial instruments or other property). Although these blocking sanctions are permitted through existing regulations, this section makes them mandatory, rather than discretionary.

Sanctions under this section are mandated against persons that have materially contributed to North Korea's nuclear and ballistic missile development or engaged in other destructive activities, including importing or exporting related WMD materiel into North Korea, or providing training to, or advising on, their weapons programs. This section also levies mandatory sanctions on those who import luxury goods into North Korea, or enable its censorship efforts or continuing human rights abuses. Finally, this section strikes at the heart of North Korea's efforts to fund their illicit activities by mandating sanctions against those who have engaged in money laundering, the manufacture of counterfeit goods, or narcotics trafficking.

This section also provides the Administration the ability to sanction those transferring, or facilitating the transfer of, financial assets and property of the North Korea regime.

The section also provides the President with the necessary authorities to effectively target those who enabled North Korea's cyber attack against the United States last year.

Section 105. This section seizes assets forfeited for violations of North Korea sanctions laws, and provides it to the US Treasury.

TITLE II—SANCTIONS AGAINST NORTH KOREAN PROLIFERATION,
HUMAN RIGHTS ABUSES, AND ILLICIT ACTIVITIES

Section 201. This section instructs the Secretary of the Treasury to determine whether North Korea is a "primary money laundering concern." If such a determination was made, that would block North Korean banks from direct or indirect access to the U.S. financial system, and require "special measures" against designated persons, North Korean government entities, and banks that provide financial services to entities found to have engaged in sanctionable conduct. Such a designation could have a debilitating effect on North Korea's ability to access the international financial system. It has been used against Iran.

Section 202. This section finds that all states and jurisdictions are obligated to implement and enforce U.N. Security Council resolutions and provides as a sense of Congress that the President should intensify efforts to implement a diplomatic strategy to protect the global financial system from North Korean threats.

Section 203. This section re-imposes those sanctions that were applied to North Korea until 2008, when the country was removed from the State Sponsors of Terrorism list. The prohibitions and restrictions described in section 203 will restrict export licenses for controlled goods and technologies, other than those issued for humanitarian purposes, subject to the same rules and regulations as if the regime were still designated a state sponsor of terrorism. It will apply penalties to U.S. persons who engage in financial transactions with the Government of North Korea, except as provided for in regulations or for humanitarian or human rights-related purposes. The section will also statutorily prohibit the export of munitions to North Korea, and sanction those who send or receive lethal military equipment from North Korea as if the regime were still designated a state sponsor of terrorism.

Section 204. This section bars persons or entities designated facilitating North Korea's destructive policies from receiving U.S. government contracts.

Section 205. This section requires the Administration to report to Congress on foreign sea ports and airports whose inspections of vessels originating from North Korea are deficient. Cargo coming from ports that consistently fail to inspect North Korean cargo, as required by U.N. resolutions, may be subject to increased inspection requirements at U.S. ports. It also allows for the seizure of ships or aircraft used for smuggling. This provision would therefore protect the U.S. homeland from ports that deliberately fail to sufficiently inspect North Korean cargo.

Section 206. This section allows the President to deny the entry into the U.S. of any foreigner that has been sanctioned under this Act.

Section 207. This section provides for exclusions and waivers from sanctions for humanitarian aid, consular activities, for cooperating witnesses and banks, and when vital to the economic or national security interests of the United States. Exemptions for humanitarian purposes are intended to include the provision of humanitarian assistance, as well as related supporting services such as financial, transportation, or insurance services, and related transactions with the government of North Korea.

Section 208. This section requires a report from the Administration on persons that conduct cyber attacks against the United States on behalf of the Government of North Korea.

TITLE III—PROMOTION OF HUMAN RIGHTS

Section 301. This section requires the President to study the feasibility of bringing unmonitored and inexpensive cellular and internet communications to the people of North Korea, to break the information blockade the regime has imposed on its own population.

Section 302. This section requires a report by the State Department on North Korea's political prison camps, which are estimated to hold up to 200,000 men, women, and children, with the hope that more public attention will be paid to North Korea's grave and pervasive crimes against humanity.

Section 303. This section requires a report by the State Department that identifies severe human rights abusers in North Korea, utilizing information collected in the recent U.N. Commission of Inquiry Report on North Korean human rights abuses, the most comprehensive such report to date.

TITLE IV— GENERAL AUTHORITIES

Section 401. This provision provides for a one-year suspension of sanctions, renewable for one consecutive year, if North Korea takes significant steps toward disarmament and reform, while preventing the premature relaxation of sanctions for false North Korean promises.

Section 402. This section terminates these sanctions if North Korea undergoes a fundamental change of governance toward an open, free, and peaceful society.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 46—FORFEITURE

§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense—

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of—

(i) section 666(a)(1) (relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);
 (iv) section 1032 (relating to concealment of assets from conservator or receiver of insured financial institution);
 (v) section 1341 (relating to mail fraud); or
 (vi) section 1343 (relating to wire fraud),
 if such violation relates to the sale of assets acquired or held by the the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(G) All assets, foreign or domestic—

(i) of any individual, entity, or organization engaged in planning or perpetrating any any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in section 2332b(g)(5)) against the United States, citizens or residents of the United States, or their property;
 or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any inter-

national organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.

(I) Any property, real or personal, that is involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 104(a) of the North Korea Sanctions Enforcement Act of 2015.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and—

- (i) the seizure is made pursuant to a lawful arrest or search; or
- (ii) another exception to the Fourth Amendment warrant requirement would apply; or
- (C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may—

- (1) place the property under seal;
- (2) remove the property to a place designated by him; or
- (3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures in-

curred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine—

- (1) to any other Federal agency;
- (2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;
- (3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency—
 - (A) to reimburse the agency for payments to claimants or creditors of the institution; and
 - (B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;
- (4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;
- (5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;
- (6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or
- (7) In the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect gen-

erally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the

stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence *ex parte* in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

- (A) has been agreed to by the Secretary of State;
- (B) is authorized in an international agreement between the United States and the foreign country; and
- (C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including prop-

erty which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—

(1) the term “Attorney General” means the Attorney General or his delegate; and

(2) the term “Secretary of the Treasury” means the Secretary of the Treasury or his delegate.

(k) INTERBANK ACCOUNTS.—

(1) IN GENERAL.—

(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

(B) AUTHORITY TO SUSPEND.—The Attorney General, in consultation with the Secretary of the Treasury, may

suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in section 984(c)(2)(A) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title), nor shall it be necessary for the Government to rely on the application of section 984.

(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title) may contest the forfeiture by filing a claim under section 983.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) INTERBANK ACCOUNT.—The term “interbank account” has the same meaning as in section 984(c)(2)(B).

(B) OWNER.—

(i) IN GENERAL.—Except as provided in clause (ii), the term “owner”—

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in section 984(c)(2)(A) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in section 984(c)(2)(A) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) EXCEPTION.—The foreign financial institution (as defined in section 984(c)(2)(A) of this title) may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in section 984(c)(2)(A) of this title); or

(II) the foreign financial institution (as defined in section 984(c)(2)(A) of this title) establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in section 984(c)(2)(A) of this title) had discharged

all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in section 984(c)(2)(A) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

* * * * *

§ 983. General rules for civil forfeiture proceedings

(a) NOTICE; CLAIM; COMPLAINT.—

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

- (i) endangering the life or physical safety of an individual;
- (ii) flight from prosecution;
- (iii) destruction of or tampering with evidence;
- (iv) intimidation of potential witnesses; or
- (v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

- (i) identify the specific property being claimed;
- (ii) state the claimant's interest in such property; and
- (iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) REPRESENTATION.—

(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

- (i) the person's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith.

(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence,

the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

(c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

(d) INNOCENT OWNER DEFENSE.—

(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who—

(i) did not know of the conduct giving rise to forfeiture;

or

(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term “innocent owner” means a person who, at the time that person acquired the interest in the property—

(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

(i) the property is the primary residence of the claimant;

(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate,

except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

(A) severing the property;

(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

(6) In this subsection, the term “owner”—

(A) means a person with an ownership interest in the specific property sought to be forfeited, including a lease-

hold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

(B) does not include—

(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(e) MOTION TO SET ASIDE FORFEITURE.—

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if—

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party.

(B) Any proceeding described in subparagraph (A) shall be commenced—

(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

(ii) if judicial, within 6 months of the entry of the order granting the motion.

(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

(f) RELEASE OF SEIZED PROPERTY.—

(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

(A) the claimant has a possessory interest in the property;

(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(E) none of the conditions set forth in paragraph (8) applies.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

(3)(A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(B) The petition described in subparagraph (A) shall set forth—

(i) the basis on which the requirements of paragraph (1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

(6) If—

(A) a petition is filed under paragraph (3); and

(B) the claimant demonstrates that the requirements of paragraph (1) have been met,
the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

(7) If the court grants a petition under paragraph (3)—

(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

(i) permitting the inspection, photographing, and inventory of the property;

(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

(B) the Government may place a lien against the property or file a *lis pendens* to ensure that the property is not transferred to another person.

(8) This subsection shall not apply if the seized property—

(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) is to be used as evidence of a violation of the law;

(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(D) is likely to be used to commit additional criminal acts if returned to the claimant.

(g) PROPORTIONALITY.—

(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportional by a preponderance of the evidence at a hearing conducted by the court without a jury.

(4) If the court finds that the forfeiture is grossly disproportional to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

(h) CIVIL FINE.—

(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.

(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term “civil forfeiture statute”—

(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

- (2) does not include—
- (A) the Tariff Act of 1930 or any other provision of law codified in title 19;
 - (B) the Internal Revenue Code of 1986;
 - (C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);
 - (D) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) [or the International Emergency Economic Powers Act], *the International Emergency Economic Powers Act* (IEEPA) (50 U.S.C. 1701 et seq.), *or the North Korea Sanctions Enforcement Act of 2015*; or
 - (E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).
- (j) RESTRAINING ORDERS; PROTECTIVE ORDERS.—
- (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—
- (A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or
 - (B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—
 - (i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
 - (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.
- (2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.
- (3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 14 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the ear-

liest possible time and prior to the expiration of the temporary order.

(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

* * * * *

CHAPTER 95—RACKETEERING

* * * * *

§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) PENALTIES.—

(1) IN GENERAL.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) JURISDICTION OVER FOREIGN PERSONS.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) COURT AUTHORITY OVER ASSETS.—A court may issue a pretrial restraining order or take any other action necessary to

ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) FEDERAL RECEIVER.—

(A) IN GENERAL.—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) APPOINTMENT AND AUTHORITY.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign

commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or trans-

porting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to

Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, [or section 92 of the Atomic Energy Act of 1954] *section 92 of the Atomic Energy Act of 1954* (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons), or *section 104(a) of the North Korea Sanctions Enforcement Act of 2015*;

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) NOTICE OF CONVICTION OF FINANCIAL INSTITUTIONS.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) VENUE.—(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified un-

lawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

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NORTH KOREAN HUMAN RIGHTS ACT OF 2004

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TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

* * * * *

SEC. 104. ACTIONS TO PROMOTE FREEDOM OF INFORMATION.

(a) **ACTIONS.**—The President is authorized to take such actions as may be necessary to increase the availability of information inside North Korea by increasing the availability of sources of information not controlled by the Government of North Korea, including sources such as radios capable of receiving broadcasting from outside North Korea.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2017 to carry out subsection (a).

(2) **AVAILABILITY.**—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, and annually through 2017, the Secretary of State, after consultation with the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees a report, in classified form, on actions taken pursuant to this section.

(d) **INFORMATION TECHNOLOGY STUDY.**—

(1) **IN GENERAL.**—*Not later than 180 days after the date of the enactment of this subsection, the President shall submit to the appropriate congressional committees a report setting forth a detailed plan for making unrestricted, unmonitored, and inexpensive, radio, Internet, and electronic mass communications available to the people of North Korea.*

(2) FORM.—The report required by paragraph (1) shall be submitted in unclassified form, but may contain a classified annex.

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