

Summary of HR 1771, “North Korea Sanctions Enforcement Act”

Legislation introduced in the House of Representatives on April 26, 2013. Full text of the legislation is available at <https://www.govtrack.us/congress/bills/113/hr1771/text>. This issue brief was last updated May 14, 2014.

Activities triggering mandatory sanctions designations:¹ requires the President to apply sanctions under the International Emergency Economic Powers Act to persons² who the President determines are engaging in specified activities. These include

- **WMD, military, and luxury good-related transactions:**³ any person who contributes goods or technology related to WMD to North Korea; exports defense articles and services to or from the government of North Korea; or exports luxury goods to North Korea [§104(a)(1)(2)(3)].
- **Transportation services facilitating sanctioned activities:**⁴ any person who “knowingly provides, sells, leases, registers, or reflags a vessel, aircraft, or other conveyance, or provides insurance or reinsurance or any other shipping or transportation service used or intended to be used for, the transportation of goods to or from North Korea” to facilitate sanctioned activities or evade sanctions [§104(a)(4)].
- **Facilitation of sanctioned activities:** any person who “knowingly transfers, pays, exports, withdraws, or otherwise deals with any property or interest in property of the Government of North Korea” to facilitate sanctioned activities or evade sanctions. [§104(a)(5)].
- **Human rights violations:** any person that knowingly engages in or facilitates censorship or serious human rights abuses committed by the government of North Korea [§104(a)(6),(7)].

¹ Referred to as “sanctioned activities” throughout this summary.

² “Persons” is defined as including individuals, corporations and other business enterprises, nongovernmental groups, and successor entities [§3(17)].

³ These transactions are already sanctioned activities under Executive Orders 13382 and 13551.

⁴ This definition of “transportation” is more detailed than found in existing Executive Orders.

- **Previous designations:** any person sanctioned under related Executive Orders or UN Security Council resolutions, or convicted of a criminal offense for any of the above activities [§104(b)].

Activities that may trigger discretionary sanctions designations: the President may designate any foreign government or financial institution under the Emergency Economic Powers Act if the president determines, 180 days after the passage of this legislation, that it engages in any of the above activities [§104(d)(1)], or if it:

- Fails to freeze funds, assets, or financial resources of designated persons; fails to freeze any funds that could be used to facilitate activities related to trade in WMD technology, defense articles/services, or luxury goods; or fails to apply enhanced monitoring to prevent such transactions [§104(d)(2),(3),(4)].
- Permits any North Korean financial institution to open/establish a new branch, subsidiary, representative office, or joint venture within its jurisdiction; or takes an ownership interest in, establishes, or maintains a correspondent account with any bank within its jurisdiction, if it could be used to facilitate trade in WMD technology, defense articles/services, or luxury goods [§104(d)5].
- Fails to prohibit the transfer of cash to or from North Korea so as to ensure that bulk cash isn't used to facilitate trade in WMD technology, defense articles/services, or luxury goods [§104(d)(6)].⁵
- Provides public financial support for trade with the government of North Korea (including grants of export credits or guarantees of insurance to their nationals involved in such trade), if such support could be used to facilitate trade in WMD technology, defense articles/services, or luxury goods [§104(d)(7)].
- Facilitates the use of proceeds of the bribery of a North Korean official, or the misappropriation, theft, or embezzlement of public funds by a North Korean official [§104(d)(8)].

Sanctions on designated persons: under the International Emergency Economic Powers Act, the President can block transactions with designated persons by persons under U.S. jurisdictions, and freeze designated persons' assets under U.S. jurisdiction. H.R. 1771 would also make any property related to mandatory sanctions designations subject to forfeiture [§105]. U.S. financial institutions are required to terminate any correspondent account established by or on behalf of a mandatory sanctions designation subject [§201(b)(1),(2)]. The President may

⁵ The legislation does not make clear whether transfers of cash are allowable if it can be confirmed that the cash will not be used to facilitate trade in WMD technology, etc...

direct the Secretary of State to deny a visa to any designated person, or an individual who is an officer or owns a controlling interest in a designated entity [§202(3)]. The U.S. government may not procure any goods or services from a designated person [§204]. Designated domestic financial institutions may not serve as primary dealers of U.S. debt instruments, or serve as a repository for U.S. government funds [§201(3)(6)]. Domestic financial institutions in which a designated person has any interest may be prohibited from any transactions in foreign exchange [§201(3)(7)].

Patriot Act Section 311 Measures: states sense of Congress that government of North Korea should be treated as a primary money laundering concern in accordance with Section 311 of the Patriot Act. Requires the Treasury Department to apply measures under Section 311 to any financial institution that “establishes, maintains, administers, or manages any correspondent account” for a designated person [§201(3)]. (These measures range from requiring U.S. banks to maintain enhanced record-keeping and reporting for any transactions with designated financial institutions, to prohibiting U.S. banks from opening or maintaining correspondent accounts with designated financial institutions.) An exception is made for humanitarian activities [§207].

Restrictions on North Korean property/financial transactions in the U.S.: requires President to freeze any North Korean property, any property involved in sanctioned activities, or any property of a designated person within a jurisdiction of the U.S. [§201(c)(1),(2)].

State Sponsor of Terrorism-related sanctions: finds that government of North Korea has “recently and repeatedly sponsored acts of international terrorism” [§2, ¶4]; would not require the U.S. government to designate North Korea as a state sponsor of terror, but would implement associated sanctions regardless of this status. These include: license requirements for exports of any goods or technology [§203(a)];⁶ prohibition of provision of defense articles and services [§203(b)]; mandated US opposition within international financial institutions to the provision of assistance to the government of North Korea [§206(b)]; and an exception to sovereign immunity [§307].

⁶ Federal regulations established by the U.S. Bureau of Industry and Security in 2007 require a license for the export of U.S. goods to the DPRK, but include a waiver for the export of food and certain medicines to North Korea, and indicate that the application for licenses for humanitarian purposes would be favorably considered. The Export Administration Act of 1979 requires licenses for the export of goods or technology to designated state sponsors of terror if the export of such goods or technology would significantly contribute to the country’s military potential or its ability to support acts of terrorism. H.R. 1771, as written, appears to require licenses for the export of any goods or technology to North Korea, including food and medicine and other items that would not contribute to military capabilities.

Conditionality on U.S. funding of IFIs: Conditions U.S. payments to international financial institutions to their assurance that the funds will not be used for assistance to the government of North Korea [§206(a)].

Financial messaging service sanctions: allows the President to sanction any person providing specialized financial messaging services or facilitating access to such services for any sanctioned North Korean financial institution. Makes exceptions if the person's domestic law prohibits such activities, and the person has accordingly terminated such activities. Requires the President to seek the voluntary cessation of such activities before applying sanctions [§202(b)].

Shipping sanctions: requires enhanced inspection requirements for any cargo that has been transported through any port or airport identified as deficient at preventing the facilitation of sanctioned activities [§205(b)]. Vessels used to facilitate such activities may be seized and forfeited if they come under U.S. jurisdiction [§205(c)].

Misuse of public funds: directs president to use authorities under International Emergency Economic Powers Act to encourage foreign governments and financial institutions to block property derived from the misappropriation, theft, or embezzlement of public funds by a North Korean official [§201(c)(3)].

Divestment: grants state and local governments, investment companies, and fiduciaries of employee benefit plans the authority to divest assets from any person determined to be engaging in investment activities (including providing loans or contracting for goods or services) in North Korea [§303, 304, 305].

Sanctions on countries buying arms from North Korea: requires President to withhold humanitarian and development aid under the Foreign Assistance Act of 1961 to governments that trade in defense goods or services with the government of North Korea; prohibition ends two years after cessation of such trade. A waiver for assistance may apply if the President determines such assistance is in the national interest of the U.S. [§206(c)].

Disclosure for issuers of securities: requires securities issuers that file annual or quarterly reports to the SEC to include in those reports a statement on whether they have engaged in any sanctioned activities, or have knowingly conducting any transaction with a designated person [§302].

Reporting requirements: mandates several one-off and periodic reports to appropriate committees in Congress:

- Requires President to provide, every 180 days, a report on assets held by the government of North Korea, whether such property is related to sanctioned activities, significant recent financial transactions by the government of North Korea, persons and governments that have provided financial or other services related to these transactions, an assessment of whether financial safeguards are sufficient to ensure that such property and transactions are prevented from facilitating illicit activities, and a list of persons designated and waivers granted in accordance with this legislation [§103].
- Requires President to provide, 90 days after enactment and every 180 days subsequently, a list of all persons providing or facilitating financial messaging services to designated North Korean financial institutions, and an assessment of U.S. efforts to end the provision of such services [§202(a)].
- Requires President to provide, every 180 days, a briefing identifying foreign ports and airports whose inspections of North Korean shipments are deemed deficient [§205(a)].
- Requires Secretary of State to submit a report on North Korean political prison camps [§306].
- Requires President to submit a classified report 180 days after enactment setting forth a detailed plan for making unrestricted, unmonitored, and inexpensive mass communications available to the people of North Korea [§301].

Humanitarian and other exceptions: designations will not be applied for any transactions whose exclusive purpose is to provide humanitarian assistance to the people of North Korea, to import food products (not designated as luxury goods) into North Korea, or to import fertilizer, pesticides, agricultural equipment, or medical supplies/equipment into North Korea (other than controlled/dual-use goods). Sanctions will also not apply to U.S. intelligence activities or transactions necessary for maintaining a diplomatic or consular relationship at the United Nations Headquarters [§207(a)]. The President may promulgate regulations to facilitate the provision of financial services by a foreign financial institution not under the control of the DPRK government in order to support these activities [§207(d)].

Conditions for waivers: the President may waive requirement to designate an entity for sanctioned activities if doing so is determined to be vital to the economic or security interests of the U.S.; if it will advance North Korean human rights; if the entity is a financial institution that has blocked North Korean property and is cooperating with a related investigation; if it benefits an entity cooperating with the investigation of sanctioned activities; if it benefits an entity that has exercised due diligence in preventing the facilitation of sanctioned activities; or if failing to do so would have a “severe and adverse humanitarian impact” outweighing the interests of enforcement. Sanctions targeting the government of North Korea may also be waived for up to a year with a determination that they would cause such a humanitarian impact [§207(b)].

Suspension of sanctions: President may remove sanctions designations on entities if they have ceased participation in sanctioned activities and cooperate with related investigations [§207(c)]. Any sanctions under this legislation may be suspended for up to a year if the President certifies that the North Korean government has done all of the following:

- Ceased counterfeiting of U.S. currency and destroyed special materials and equipment used for counterfeiting.
- Taken significant steps toward financial transparency.
- Taken significant steps toward compliance with relevant UN resolutions.
- Taken significant steps toward accounting for and repatriating abductees.
- Taken significant steps toward verification of its compliance with the September 19, 2005 joint statement on denuclearization.
- Begun to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid.
- Provided credible assurances that it will not support further acts of international terrorism.
- Taken verified steps to improve living conditions in its political prison camps.

The suspension may be renewed for an additional year if the President determines that North Korea has continued to make significant progress on the above steps, and has met two or more of the requirements for the termination of sanctions (below) [§401].

Termination of sanctions: Sanctions will be terminated if President determines that the requirements for suspension have been met, and that North Korea has also

- Completely, verifiably, and irreversibly dismantled all of its nuclear, chemical, biological, and radiological weapons programs, including all programs for delivery systems of such weapons.
- Released all political prisoners.
- Ceased censorship of peaceful political activity.
- Taken significant steps toward establishing an open, transparent, and representative society.
- Fully accounted for all abductees.
- Made progress toward establishing an independent judiciary and respecting the human rights recognized in the Universal Declaration of Human Rights.

Enforcement and Humanitarian Fund: Money from forfeitures and penalties related to sanctions is authorized to be used for investigations and enforcement of sanctions, and for purposes established in the North Korea Human Rights Act.