

119TH CONGRESS
1ST SESSION

H. R. _____

To require entities seeking a license to export advanced artificial intelligence chips to countries of concern to certify that United States persons have priority in acquiring those chips.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To require entities seeking a license to export advanced artificial intelligence chips to countries of concern to certify that United States persons have priority in acquiring those chips.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guaranteeing Access
5 and Innovation for National Artificial Intelligence Act of
6 2025” or the “GAIN AI Act of 2025”.

1 **SEC. 2. PROHIBITION ON PRIORITIZING COUNTRIES OF**
2 **CONCERN OVER UNITED STATES PERSONS**
3 **FOR EXPORTS OF ADVANCED INTEGRATED**
4 **CIRCUITS.**

5 Part I of the Export Control Reform Act of 2018 (50
6 U.S.C. 4811 et seq.) is amended by inserting after section
7 1758 the following new section:

8 **“SEC. 1758A. CONTROL OF EXPORTS OF CERTAIN AD-**
9 **VANCED INTEGRATED CIRCUITS.**

10 “(a) **LICENSE REQUIREMENT.**—The Under Secretary
11 of Commerce for Industry and Security shall require a li-
12 cense for the export, reexport, or in-country transfer of
13 a covered advanced circuit or product to an entity located
14 or headquartered in, or whose ultimate parent company
15 is headquartered in, a country of concern.

16 “(b) **CERTIFICATION OF PRIORITY FOR UNITED**
17 **STATES CUSTOMERS FOR CERTAIN ADVANCED INTE-**
18 **GRATED CIRCUITS.**—

19 “(1) **CERTIFICATION REQUIREMENT.**—The
20 Under Secretary of Commerce for Industry and Se-
21 curity shall require a person submitting an applica-
22 tion for a license under subsection (a) to certify in
23 the application that such person provided a right of
24 first refusal to United States persons.

25 “(2) **DENIAL OF APPLICATIONS WITHOUT CER-**
26 **TIFICATION.**—Such Under Secretary shall deny each

1 application for a license under subsection (a) that
2 does not include a certification described in para-
3 graph (1).

4 “(3) IMPLEMENTATION.—Not later than 120
5 days after the date of the enactment of this section,
6 such Under Secretary shall consult with the public
7 and prescribe regulations providing guidance, based
8 on such consultation, for complying with the certifi-
9 cation requirement under paragraph (1), which shall
10 include—

11 “(A) information that the person submit-
12 ting an application for a license under sub-
13 section (a) is required to make available about
14 transactions with entities described in sub-
15 section (a), and the form the public notice of
16 such information must take, to ensure that
17 United States persons can exercise a right of
18 first refusal under paragraph (1);

19 “(B) procedures for United States persons
20 to exercise a right of first refusal under para-
21 graph (1), including—

22 “(i) how public notice of the right of
23 first refusal shall be provided; and

24 “(ii) guidance on when a United
25 States person should inform such Under

1 Secretary that they are seeking to exercise
2 a right of first refusal;

3 “(C) conditions upon which a person sub-
4 mitting an application for a license under sub-
5 section (a) may proceed with the transaction
6 that such license is required for if a request to
7 exercise a right of first refusal is not made in
8 good faith or completed in the required time-
9 frame;

10 “(D) recordkeeping requirements;

11 “(E) penalties for misrepresentation and
12 concealment of material facts; and

13 “(F) guidance with respect to determining
14 whether—

15 “(i) a United States person exercising
16 a right of first refusal has taken a material
17 step to complete a transaction within the
18 required timeframe; and

19 “(ii) the export, reexport, or in-coun-
20 try transfer of a covered advanced circuit
21 or product would create—

22 “(I) backlog of requests from
23 United States persons for the covered
24 advanced circuit or product with re-
25 spect to which an application for a li-

1 cense is submitted under subsection
2 (a) or a comparable covered advanced
3 circuit or product; or

4 “(II) a reduction in the capacity
5 of production lines for the production,
6 for United States persons, of the cov-
7 ered advanced circuit or product with
8 respect to which an application for a
9 license is submitted under subsection
10 (a) or a comparable covered advanced
11 circuit or product; and

12 “(iii) a person submitting an applica-
13 tion for a license under subsection (a) pro-
14 vides advantageous pricing or terms for the
15 covered advanced circuit or product with
16 respect to which such application is sub-
17 mitted for to foreign persons that are not
18 provided to United States persons.

19 “(4) RULE OF CONSTRUCTION.—In the case of
20 more than one United States person requesting to
21 exercise a right of first refusal, nothing in this sub-
22 section shall be construed to authorize the Under
23 Secretary of Commerce for Industry and Security, or
24 any other Federal official, to allocate, prioritize, or
25 otherwise select one United States person over any

1 other United States person submitting such a re-
2 quest.

3 “(c) EXEMPTION FROM CERTAIN LICENSE REQUIRE-
4 MENT FOR TRUSTED UNITED STATES PERSONS.—

5 “(1) IN GENERAL.—The requirement for a li-
6 cense under sections 742.6 and 744.23 of title 15,
7 Code of Federal Regulations shall not apply to the
8 export, reexport, or in-country transfer of a covered
9 advanced circuit or product if the covered advanced
10 circuit or product—

11 “(A) is destined for a country that is not
12 a country of concern; and

13 “(B) once in operation, remains under the
14 ownership and control of a trusted United
15 States person.

16 “(2) IMPLEMENTATION.—Not later than 120
17 days after the date of the enactment of this section,
18 the Under Secretary of Commerce for Industry and
19 Security shall consult with the public and, based on
20 such consultation, prescribe regulations—

21 “(A) establishing the standards and re-
22 quirements a United States person is required
23 to meet to obtain a designation as a trusted
24 United States person, which shall include—

1 “(i) establishment by the United
2 States person of physical security, cyberse-
3 curity, and other measures designed to
4 prevent the illicit transfer or diversion of
5 covered circuits and products, or other vio-
6 lations of United States export control reg-
7 ulations;

8 “(ii) a requirement that the United
9 States person may not transfer or install a
10 majority of its aggregate total processing
11 performance of covered circuits or products
12 outside the United States;

13 “(iii) a requirement that not more
14 than 10 percent of the ultimate beneficial
15 ownership of the United States person may
16 be held, directly or indirectly, by any entity
17 that primarily resides, is domiciled, or con-
18 ducts the majority of its business in a
19 country of concern; and

20 “(iv) annual audit or attestation re-
21 quirement to ensure compliance with this
22 subparagraph; and

23 “(B) describing the process by which such
24 Under Secretary shall approve such a designa-
25 tion under subparagraph (A).

1 “(d) DEFINITIONS.—In this section:

2 “(1) ADVANCED INTEGRATED CIRCUIT.—

3 “(A) IN GENERAL.—Subject to subpara-
4 graph (B), the term ‘advanced integrated cir-
5 cuit’ means—

6 “(i) an integrated circuit, computer,
7 or other product—

8 “(I) classified under Export Con-
9 trol Classification Number 3A090 or
10 4A090 or related Export Control
11 Classification Numbers; or

12 “(II) that is functionally equiva-
13 lent or substantially similar to a cir-
14 cuit, computer, or product described
15 in subclause (I); or

16 “(ii) an integrated circuit that has
17 one or more digital processing units with—

18 “(I) a total processing perform-
19 ance of 4,800 or more;

20 “(II) a total processing perform-
21 ance of 2,400 or more and a perform-
22 ance density of 1.6 or more;

23 “(III) a total processing perform-
24 ance of 1,600 or more and a perform-
25 ance density of 3.2 or more; or

1 “(IV) a total DRAM bandwidth
2 of 1,400 gigabytes per second or
3 more, interconnect bandwidth of
4 1,100 gigabytes per second or more,
5 or a sum of DRAM bandwidth and
6 interconnect bandwidth of 1,700
7 gigabytes per second or more.

8 “(B) AUTHORITY TO UPDATE TECHNICAL
9 PARAMETERS.—Beginning 24 months after the
10 date of the enactment of this section, the Under
11 Secretary of Commerce for Industry and Secu-
12 rity may add new technical parameters for the
13 definition of ‘advanced integrated circuit’ fol-
14 lowing publication of such parameters and a no-
15 tice and comment period in the Federal Reg-
16 ister.

17 “(2) COMMERCE CONTROL LIST.—The term
18 ‘Commerce Control List’ means the list set forth in
19 Supplement No. 1 to part 774 of title 15, Code of
20 Federal Regulations.

21 “(3) COUNTRY OF CONCERN.—The term ‘coun-
22 try of concern’ means—

23 “(A) a country listed in Country Group
24 D:5 or E in Supplement No. 1 to part 740 of
25 title 15, Code of Federal Regulations;

1 “(B) the Macau Special Administrative Re-
2 gion of the People’s Republic of China; or

3 “(C) the Hong Kong Special Administra-
4 tive Region of the People’s Republic of China.

5 “(4) COVERED ADVANCED CIRCUIT OR PROD-
6 UCT.—

7 “(A) IN GENERAL.—Except as provided by
8 subparagraph (B), the term ‘covered advanced
9 circuit or product’ means—

10 “(i) an advanced integrated circuit; or

11 “(ii) a product containing such a cir-
12 cuit.

13 “(B) EXCLUSION.—The term ‘covered ad-
14 vanced circuit or product’ does not include an
15 advanced integrated circuit or a product con-
16 taining such a circuit that is not designed or
17 marketed for data centers.

18 “(5) PERFORMANCE DENSITY; TOTAL PROC-
19 ESSING PERFORMANCE.—The terms ‘performance
20 density’ and ‘total processing performance’ have the
21 meanings given those terms in, and are calculated as
22 provided for under, Export Control Classification
23 Number 3A090 in the Commerce Control List set
24 forth in Supplement No. 1 to part 774 of title 15,
25 Code of Federal Regulations.

1 “(6) RIGHT OF FIRST REFUSAL.—

2 “(A) IN GENERAL.—The term ‘right of
3 first refusal’ means the person applying for a li-
4 cense under subsection (a)—

5 “(i) provides, through public notice,
6 not less than a 15-day period for United
7 States persons to inquire about purchasing
8 a covered advanced circuit or product that
9 would otherwise be sold to an entity lo-
10 cated or headquartered in, or whose ulti-
11 mate parent company is headquartered in,
12 a country of concern;

13 “(ii) provides preference to a United
14 States person submitting an inquiry under
15 clause (i), if such United States person—

16 “(I) requests to purchase any
17 quantity of the covered advanced cir-
18 cuit or product with respect to which
19 such application is submitted for on
20 the terms such covered advanced cir-
21 cuit or product is offered for; and

22 “(II) takes material steps to
23 complete such purchase within 15
24 business days of requesting to make
25 such purchase;

1 “(iii) has no current backlog of re-
2 quests from United States persons for the
3 covered advanced circuit or product with
4 respect to which such application is sub-
5 mitted for or a comparable covered ad-
6 vanced circuit or product;

7 “(iv) cannot reasonably foresee, based
8 on material information known to such
9 person, that the production and export, re-
10 export, or in-country transfer of the cov-
11 ered advanced circuit or product with re-
12 spect to which such application is sub-
13 mitted for will result, during the 12-month
14 period following such export, reexport, or
15 in-country transfer, in—

16 “(I) a backlog of requests de-
17 scribed under clause (iii); or

18 “(II) a reduction in production
19 line capacity for the production of a
20 covered advanced circuit or product or
21 a substantially similar covered ad-
22 vanced circuit or product, for United
23 States persons; and

24 “(v) is not providing advantageous
25 pricing or terms for the covered advanced

1 circuit or product with respect to which
2 such application is submitted for to foreign
3 persons that are not provided to United
4 States persons.

5 “(B) DEFINITIONS.—In this paragraph:

6 “(i) BACKLOG OF REQUESTS.—The
7 term ‘backlog of requests’ means a request
8 from any United States person for a cov-
9 ered advanced circuit or product that—

10 “(I) is formally documented
11 through—

12 “(aa) a purchase order or
13 enforceable contract; or

14 “(bb) a formal request for
15 supply consistent with ordinary
16 commercial practice that specifies
17 quantity, price, and timeframe of
18 delivery; and

19 “(II) is not fulfilled or will not be
20 able to fulfill within a timeframe con-
21 sistent with commercially standard
22 production and delivery lead times.

23 “(ii) MATERIAL INFORMATION.—In
24 this paragraph, the term ‘material infor-

1 mation’ includes information disclosed to
2 investors, shareholders, or in public filings.
3 “(7) TRUSTED UNITED STATES PERSON.—The
4 term ‘trusted United States person’ means any
5 United States person designated as a trusted United
6 States person pursuant to subsection (c)(2).”.