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S. 3859

To control the export of electronic waste in order to ensure that such waste does not become the source of counterfeit goods that may reenter military and civilian electronics supply chains in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2022

Mr. WHITEHOUSE (for himself and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To control the export of electronic waste in order to ensure that such waste does not become the source of counterfeit goods that may reenter military and civilian electronics supply chains in the United States, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure E-Waste Ex-
5 port and Recycling Act”.

6 **SEC. 2. EXPORT CONTROLS ON ELECTRONIC WASTE.**

7 (a) DEFINITIONS.—In this section:

1 (1) COUNTERFEIT MILITARY GOOD.—The term
2 “counterfeit military good” means a counterfeit good
3 that—

4 (A) is falsely identified or labeled as meet-
5 ing military specifications; or

6 (B) is intended for use in a military, intel-
7 ligence, or national security application.

8 (2) COUNTERFEIT GOOD.—The term “counter-
9 feit good” means any good on which, or in connec-
10 tion with which, a counterfeit mark is used.

11 (3) COUNTERFEIT MARK.—The term “counter-
12 feit mark” has the meaning given that term in sec-
13 tion 2320 of title 18, United States Code.

14 (4) ELECTRONIC WASTE.—

15 (A) IN GENERAL.—The term “electronic
16 waste” means any of the following used items
17 containing electronic components, or fragments
18 thereof, including parts or subcomponents of
19 such items:

20 (i) Computers and related equipment.

21 (ii) Data center equipment (including
22 servers, network equipment, firewalls, bat-
23 tery backup systems, and power distribu-
24 tion units).

1 (iii) Mobile computers (including note-
2 books, netbooks, tablets, and e-book read-
3 ers).

4 (iv) Televisions (including portable
5 televisions and portable DVD players).

6 (v) Video display devices (including
7 monitors, digital picture frames, and port-
8 able video devices).

9 (vi) Digital imaging devices (including
10 printers, copiers, facsimile machines, image
11 scanners, and multifunction machines).

12 (vii) Consumer electronics—

13 (I) including digital cameras,
14 projectors, digital audio players, cel-
15 lular phones and wireless internet
16 communication devices, audio equip-
17 ment, video cassette recorders, DVD
18 players, video game systems (includ-
19 ing portable systems), video game
20 controllers, signal converter boxes,
21 and cable and satellite receivers; and

22 (II) not including appliances that
23 have electronic features.

24 (viii) Portable global positioning sys-
25 tem navigation devices.

1 (ix) Other used electronic items that
 2 the Secretary determines to be necessary
 3 to carry out this section.

4 (B) EXEMPT ITEMS.—The term “electronic
 5 waste” does not include—

6 (i) exempted electronic waste items;

7 (ii) electronic parts of a motor vehicle;

8 or

9 (iii) electronic components, or items
 10 containing electronic components, that are
 11 exported or reexported to an entity under
 12 the ownership or control of the person ex-
 13 porting or reexporting the components or
 14 items, with the intent that the components
 15 or items be used for the purpose for which
 16 the components or items were used in the
 17 United States.

18 (5) EXEMPTED ELECTRONIC WASTE ITEMS.—
 19 The term “exempted electronic waste items” means
 20 the following:

21 (A) Tested, working used electronics.

22 (B) Low-risk counterfeit electronics.

23 (C) Recalled electronics.

24 (6) EXPORT ADMINISTRATION REGULATIONS.—

25 The term “Export Administration Regulations”

1 means the regulations set forth in subchapter C of
2 chapter VII of title 15, Code of Federal Regulations,
3 or successor regulations.

4 (7) EXPORT; REEXPORT.—The terms “export”
5 and “reexport” have the meanings given those terms
6 in section 1742 of the Export Control Reform Act
7 of 2018 (50 U.S.C. 4801).

8 (8) FEEDSTOCK.—The term “feedstock” means
9 any raw material constituting the principal input for
10 an industrial process.

11 (9) LOW-RISK COUNTERFEIT ELECTRONICS.—
12 The term “low-risk counterfeit electronics” means
13 any electronic components or items that—

14 (A) have been subjected to destruction
15 processes that render the items unusable for
16 their original purpose; and

17 (B) are exported as a feedstock, with no
18 additional mechanical or hand separation re-
19 quired, in a reclamation process to render the
20 electronic components or items recycled con-
21 sistent with the laws of the foreign country per-
22 forming the reclamation process.

23 (10) PERSON.—The term “person” means an
24 individual or entity.

1 (11) RECALLED ELECTRONICS.—The term “re-
2 called electronics” means any electronic items that—

3 (A) because of a defect in the design or
4 manufacture of the items—

5 (i) are subject to a recall notice issued
6 by the Consumer Product Safety Commis-
7 sion or other pertinent Federal authority
8 and have been received by the manufac-
9 turer or its agent and repaired by the
10 manufacturer or its agent to cure the de-
11 fect; or

12 (ii) have been recalled by the manu-
13 facturer as a condition of the validity of
14 the warranty on the items and have been
15 repaired by the manufacturer or its agent
16 to cure the defect; and

17 (B) are exported by the manufacturer of
18 the items.

19 (12) SECRETARY.—The term “Secretary”
20 means the Secretary of Commerce.

21 (13) TESTED, WORKING USED ELECTRONICS.—
22 The term “tested, working used electronics” means
23 any used electronic items that—

24 (A) are determined, through testing meth-
25 odologies established by the Secretary, to be—

1 (i) fully functional for the purpose for
2 which the items were designed; or

3 (ii) in the case of multifunction de-
4 vices, fully functional for at least one of
5 the primary purposes for which the items
6 were designed;

7 (B) are exported with the intent to reuse
8 the products as functional products; and

9 (C) are appropriately packaged for ship-
10 ment to prevent the items from losing
11 functionality as a result of damage during ship-
12 ment.

13 (14) USED.—The term “used”, with respect to
14 an item, means the item has been operated or em-
15 ployed.

16 (b) PROHIBITION.—Except as provided in subsections
17 (c) and (d), no person may export or reexport electronic
18 waste or exempted electronic waste items.

19 (c) EXPORT PROHIBITION EXEMPTIONS.—A person
20 may export or reexport exempted electronic waste items
21 if the following requirements are met:

22 (1) REGISTRATION.—The person is listed on a
23 publicly available registry maintained by the Sec-
24 retary of persons authorized to export or reexport
25 exempted electronic waste.

1 (2) PURPOSE.—The exempted electronic waste
2 items are being exported or reexported for reclama-
3 tion, recall, or reuse.

4 (3) FILING OF EXPORT INFORMATION.—For
5 each export transaction, the person files in the Auto-
6 mated Export System, in accordance with part 758
7 of the Export Administration Regulations (or any
8 corresponding similar regulation or ruling), elec-
9 tronic export information that contains, at a min-
10 imum, the following information:

11 (A) A description of the type and total
12 quantity of exempted electronic waste items ex-
13 ported.

14 (B) The name of each country that will re-
15 ceive the exempted electronic waste items for
16 reuse, recall, or recycling.

17 (C)(i) The name of the ultimate consignee
18 that will receive the exempted electronic waste
19 items for reclamation, recall, or reuse; and

20 (ii) documentation and a declaration that
21 such consignee has the necessary permits, re-
22 sources, and competence to manage the exempt-
23 ed electronic waste items as reusable products
24 or recyclable feedstock and prevent the release

1 of such items as counterfeit goods or counter-
2 feit military goods.

3 (4) COMPLIANCE WITH EXISTING LAWS.—The
4 export or reexport of the exempted electronic waste
5 items otherwise complies with applicable inter-
6 national agreements to which the United States is a
7 party and with other trade and export control laws
8 of the United States.

9 (5) EXPORT DECLARATIONS AND REQUIRE-
10 MENTS.—The exempted electronic waste items are
11 accompanied by—

12 (A) documentation of the registration of
13 the exporter required under paragraph (1);

14 (B) a declaration signed by an officer or
15 designated representative of the exporter assert-
16 ing that the exempted electronic waste items
17 meet the applicable requirements for exempted
18 electronic waste items under this section;

19 (C) a description of the contents and con-
20 dition of the exempted electronic waste items in
21 the shipment;

22 (D) for tested, working used electronics, a
23 description of the testing methodologies and
24 test results for each item;

1 (E) the name of the ultimate consignee
2 and declaration of the consignee's applicable
3 permits, resources, and competence to process
4 or use the items as intended; and

5 (F) with respect to low-risk counterfeit
6 electronics only and when required by the coun-
7 try to which the electronics are being exported
8 or reexported, the written consent of the com-
9 petent authority of the country to allow the
10 entry of the electronics into the country.

11 (d) EXCEPTION FOR PERSONAL USE.—The Sec-
12 retary may provide for an exception to the requirements
13 of this section, subject to such recordkeeping requirements
14 as the Secretary may impose, for the export or reexport
15 of 5 or fewer items that are or contain electronic compo-
16 nents intended for personal use.

17 (e) PENALTIES FOR VIOLATIONS.—Any person who
18 violates this section or the regulations issued under sub-
19 section (f)(2) shall be subject to the same penalties as
20 those that apply to any person violating any other provi-
21 sion of the Export Administration Regulations.

22 (f) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 this section shall take effect upon the expiration of

1 the 1-year period beginning on the date of the enact-
2 ment of this Act.

3 (2) MODIFICATION OF EAR.—The Secretary
4 shall, not later than the effective date under para-
5 graph (1), ensure that the Export Administration
6 Regulations are modified to carry out this section.

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