

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. BANKS (for himself, Ms. WARREN, Mr. COTTON, Mr. SCHUMER, Mr. MCCORMICK, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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:

8 **“SEC. 1758A. CONTROL OF EXPORTS OF ADVANCED INTE-**  
9 **GRATED CIRCUITS.**

10 “(a) **DEFINITIONS.**—In this section:

11 “(1) **ADVANCED INTEGRATED CIRCUIT.**—

12 “(A) **IN GENERAL.**—Subject to subpara-  
13 graph (B), the term ‘advanced integrated cir-  
14 cuit’ means—

15 “(i) an integrated circuit, computer,  
16 or other product—

17 “(I) classified under Export Con-  
18 trol Classification Number 3A090 or  
19 4A090 or related Export Control  
20 Classification Numbers; or

21 “(II) that is functionally equiva-  
22 lent or substantially similar to a cir-  
23 cuit, computer, or product described  
24 in subclause (I); or

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

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

3                   “(II) a total processing perform-  
4                   ance of 2,400 or more and a perform-  
5                   ance density of 1.6 or more;

6                   “(III) a total processing perform-  
7                   ance of 1,600 or more and a perform-  
8                   ance density of 3.2 or more; or

9                   “(IV) a total DRAM bandwidth  
10                  of 1,400 gigabytes per second or  
11                  more, interconnect bandwidth of  
12                  1,100 gigabytes per second or more,  
13                  or a sum of DRAM bandwidth and  
14                  interconnect bandwidth of 1,700  
15                  gigabytes per second or more.

16                  “(B) AUTHORITY TO UPDATE TECHNICAL  
17                  PARAMETERS.—Beginning 36 months after the  
18                  date of the enactment of this section, the Under  
19                  Secretary may add new technical parameters  
20                  for the definition of ‘advanced integrated cir-  
21                  cuit’ for purposes of this section following publi-  
22                  cation of the parameters in the Federal Reg-  
23                  ister and a period of public notice and com-  
24                  ment.

1           “(2) BACKLOG OF REQUESTS.—The term ‘back-  
2           log of requests’, in the case of a person submitting  
3           an application for a license under subsection (b),  
4           means the person has received a request from a  
5           United States person for a covered circuit or product  
6           that—

7                   “(A) is formally documented through—

8                           “(i) a purchase order or enforceable  
9                           contract; or

10                           “(ii) any other format consistent with  
11                           ordinary commercial practice that specifies  
12                           quantity, price, and time frame of delivery;  
13                           and

14                           “(B) the person has not fulfilled or will not  
15                           be able to fulfill the request within a time frame  
16                           consistent with commercially standard produc-  
17                           tion and delivery lead times.

18           “(3) COMMERCE CONTROL LIST.—The term  
19           ‘Commerce Control List’ means the list set forth in  
20           Supplement No. 1 to part 774 of the Export Admin-  
21           istration Regulations.

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

1           “(A) a country listed in Country Group  
2           D:5 or E in Supplement No. 1 to part 740 of  
3           the Export Administration Regulations;

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

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

8           “(5) COVERED CIRCUIT OR PRODUCT.—

9           “(A) IN GENERAL.—Except as provided by  
10          subparagraph (B), the term ‘covered circuit or  
11          product’ means an advanced integrated circuit  
12          or a product containing such a circuit.

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

18          “(6) 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 the Export  
25          Administration Regulations.

1           “(7) TRUSTED UNITED STATES PERSON.—The  
2           term ‘trusted *United States* person’ means any  
3           United States person designated as a trusted United  
4           States person pursuant to subsection (d)(2).

5           “(b) LICENSE REQUIREMENT.—The Under Secretary  
6           of Commerce for Industry and Security shall require a li-  
7           cense for the export, reexport, or in-country transfer of  
8           a covered circuit or product to an entity that is located  
9           or headquartered in, or the ultimate parent company of  
10          which is headquartered in, a country of concern.

11          “(c) CERTIFICATION OF PRIORITY FOR UNITED  
12          STATES CUSTOMERS FOR CERTAIN ADVANCED INTE-  
13          GRATED CIRCUITS.—

14                 “(1) CERTIFICATION REQUIREMENT.—The  
15                 Under Secretary shall require a person submitting  
16                 an application for a license under subsection (b) for  
17                 the export, reexport, or in-country transfer of a cov-  
18                 ered circuit or product to an entity described in sub-  
19                 section (b) to certify in the application that—

20                         “(A) United States persons had a right of  
21                         first refusal for the covered circuit or product,  
22                         which means the person submitting the applica-  
23                         tion—

24                                 “(i) provided, through a public notice,  
25                                 United States persons with the opportunity

1 to inquire about purchasing a covered cir-  
2 cuit or product that would otherwise be  
3 sold to an entity described in subsection  
4 (b);

5 “(ii) provided not fewer than 15 busi-  
6 ness days for a United States person to in-  
7 quire and request to purchase the covered  
8 circuit or product; and

9 “(iii) provided preference to a United  
10 States person submitting an inquiry under  
11 clause (i) if the United States person—

12 “(I) requests to purchase the full  
13 quantity or a lesser quantity of the  
14 covered circuit or product offered by  
15 the person submitting the application;  
16 and

17 “(II) takes material steps to  
18 complete the purchase within 15 busi-  
19 ness days of requesting to purchase  
20 the covered circuit or product; and

21 “(B) the person submitting the applica-  
22 tion—

23 “(i) has no current backlog of re-  
24 quests from United States persons for the  
25 covered circuit or product or a comparable

1 circuit or product that utilizes substan-  
2 tially similar production process, infra-  
3 structure, or supply;

4 “(ii) cannot reasonably foresee, based  
5 on material information known to the per-  
6 son, including information disclosed to in-  
7 vestors or shareholders or in public filings,  
8 the production and export, reexport, or in-  
9 country transfer of the covered circuit or  
10 product resulting, during the 12-month pe-  
11 riod following the export, reexport, or in-  
12 country transfer, in—

13 “(I) such a backlog; or

14 “(II) a reduction in critical pro-  
15 duction capacity for the production of  
16 a covered circuit or product or a sub-  
17 stantially similar circuit or product  
18 that utilizes substantially similar pro-  
19 duction process, infrastructure, or  
20 supply for United States persons; and

21 “(iii) is not providing advantageous  
22 pricing or terms for the covered circuit or  
23 product to foreign persons that the person  
24 is not providing to United States persons.

1           “(2) DENIAL OF APPLICATIONS WITHOUT CER-  
2           TIFICATION.—If a certification described in para-  
3           graph (1) is not submitted with an application for  
4           a license required under subsection (b), the Under  
5           Secretary shall deny the license.

6           “(3) IMPLEMENTATION.—Not later than 90  
7           days after the date of the enactment of this section,  
8           the Under Secretary shall—

9                   “(A) seek input from the public regarding  
10                   compliance with the certification requirements  
11                   under paragraph (1); and

12                   “(B) based on such input, prescribe regu-  
13                   lations providing guidance for compliance with  
14                   the certification requirements, which shall in-  
15                   clude—

16                           “(i) information that the person sub-  
17                           mitting an application for a license under  
18                           subsection (b) is required to make avail-  
19                           able about transactions with entities de-  
20                           scribed in subsection (b) to ensure that  
21                           United States persons can exercise a right-  
22                           of-first-refusal under paragraph (1)(A);

23                           “(ii) procedures for United States  
24                           persons to exercise such a right-of-first-re-  
25                           fusal, including—

1                   “(I) the procedural requirements  
2                   for public notice under paragraph  
3                   (1)(A)(i); and

4                   “(II) guidance on when a United  
5                   States person should inform the  
6                   Under Secretary of Commerce for In-  
7                   dustry and Security that the person is  
8                   seeking to exercise the right-of-first-  
9                   refusal under paragraph (1)(A);

10                  “(iii) conditions upon which a person  
11                  submitting an application for a license  
12                  under subsection (b) may proceed with the  
13                  export, reexport, or in-country transfer of  
14                  the covered circuit or product if a request  
15                  from a United States person under para-  
16                  graph (1)(A) to purchase the covered cir-  
17                  cuit or product was not made in good faith  
18                  or completed in a timely manner;

19                  “(iv) recordkeeping requirements;

20                  “(v) penalties for misrepresentation  
21                  and concealment of material facts; and

22                  “(vi) guidance with respect to deter-  
23                  mining whether—

24                  “(I) a United States person exer-  
25                  cising the right-of-first-refusal has

1 taken a material step under para-  
2 graph (1)(A)(iii)(II);

3 “(II) the export, reexport, or in-  
4 country transfer of a covered circuit  
5 or product would create—

6 “(aa) a backlog of requests  
7 described in paragraph (1)(B)(i);  
8 or

9 “(bb) a reduction in critical  
10 production capacity described in  
11 paragraph (1)(B)(ii)(II); and

12 “(III) the person selling the cir-  
13 cuit or product is providing advan-  
14 tageous pricing or terms to foreign  
15 persons as described in paragraph  
16 (1)(B)(iii).

17 “(4) RULES OF CONSTRUCTION.—Nothing in  
18 this subsection shall be construed—

19 “(A) in the case of more than one United  
20 States person requesting to purchase a covered  
21 circuit or product under paragraph (1)(A)(iii),  
22 to authorize the Under Secretary of Commerce  
23 for Industry and Security, or any other Federal  
24 official, to allocate, prioritize, or otherwise se-  
25 lect one United States person over any other

1 United States person submitting such a re-  
2 quest;

3 “(B) to require a person submitting an ap-  
4 plication for a license under subsection (b) to  
5 publicly disclose commercially sensitive or pro-  
6 prietary information, including—

7 “(i) customer identities;

8 “(ii) contract terms;

9 “(iii) delivery schedules; or

10 “(iv) pricing data; or

11 “(C) as applying to a covered circuit prod-  
12 uct that is designed and manufactured exclu-  
13 sively for internal use.

14 “(d) EXEMPTION FROM CERTAIN LICENSE RE-  
15 QUIREMENT FOR TRUSTED UNITED STATES PERSONS.—

16 “(1) IN GENERAL.—The requirement for a li-  
17 cense under sections 742.4 and 744.23 of the Ex-  
18 port Administration Regulations shall not apply to  
19 the export, reexport, or in-country transfer of a cov-  
20 ered circuit or product if the covered circuit or prod-  
21 uct—

22 “(A) is destined for a country that is not  
23 a country of concern; and

1           “(B) remains under the ownership and  
2           control of a trusted United States person once  
3           the covered circuit or product is in operation.

4           “(2) IMPLEMENTATION.—Not later than 90  
5           days after the date of the enactment of this section,  
6           the Under Secretary of Commerce for Industry and  
7           Security shall—

8           “(A) seek input from the public regarding  
9           the standards and requirements a United  
10          States person is required to meet to obtain a  
11          designation as a trusted United States person;  
12          and

13          “(B) based on such input, prescribe regu-  
14          lations establishing such standards and require-  
15          ments, which shall include—

16               “(i) establishment by the United  
17               States person of physical security, cyberse-  
18               curity, and other measures designed to  
19               prevent the illicit transfer or diversion of  
20               covered circuit products and comply with  
21               export control regulations;

22               “(ii) a requirement that the United  
23               States person may not transfer or install a  
24               majority of its aggregate total processing

1 performance of covered circuits or products  
2 outside the United States;

3 “(iii) a requirement that not more  
4 than 10 percent of the ultimate beneficial  
5 ownership of the United States person may  
6 be held, directly or indirectly, by any entity  
7 that primarily resides, is domiciled, or con-  
8 ducts the majority of its business in a  
9 country of concern;

10 “(iv) a preference for sourcing ad-  
11 vanced integrated circuit and subcompo-  
12 nents from production facilities that sup-  
13 port the revival of semiconductor manufac-  
14 turing in the United States; and

15 “(v) annual audit or attestation re-  
16 quirements to ensure compliance with  
17 clauses (i), (ii), and (iii); and

18 “(C) prescribe regulations establishing the  
19 process by which the Under Secretary shall ap-  
20 prove such a designation.”.