

What would the [“SOFTENED”] Israel Anti-Boycott Act Do? Read the Law (amended by the “softened” Act) for Yourself

People continue to argue about what the Israel Anti-Boycott Act would or wouldn’t do, or aim or doesn’t aim to do. It is a very odd debate, because this is a matter of facts, not opinion (opinions may well differ on what people hope it will or won’t do; the facts about what it would do to the law are a matter of record).

To facilitate a clearer debate about this issue, I’ve pulled into this document all of the existing law that would be amended by the [S. 720](#), as “softened” by its sponsors in the context of the March 2018 AIPAC policy conference. I’ve gone ahead and made the amendments that the “softened” S. 720 would make in those laws. For the sake of comparison, my document showing what the original version of S. 720 would do to existing U.S. law is [here](#).

Please folks – take the time to read this for yourself before opining about what this “softened” version of the legislation does or does not do. Strike-through indicates existing law deleted by S. 720. Underlined indicates law added by S. 720 to existing law.

KEY CHANGES FROM PRIOR VERSION:

- (1) the legislation now stipulates that violators of the law will face only monetary penalties (not jail) [up to \$250 thousand for civil penalties and \$1 million for criminal penalties]
- (2) A “Rule of Construction” has been added stated that “Nothing in this Act or an amendment made by this Act shall be construed to diminish or infringe upon any right protected under the First Amendment of the Constitution of the United States.” [Note: A rule of construction is in effect a non-binding statement of intent; it in no way changes the meaning of the actual binding provisions of the actual law].
- (3) The previous version of the bill did not state explicitly define “boycotts of Israel” (or the like) as including settlements, but instead achieved this by referencing legislation previously passed by Congress that adopted this definition (19 USC 4201(b)(20)(B)). This “softened” version of the bill is much more direct in its intention, adding a new “definition” section, as follows:

SEC. 6. DEFINITIONS

(a) IN GENERAL.—In this Act:

(1) ACTIONS TO BOYCOTT, DIVEST FROM, OR SANCTION ISRAEL OR PERSONS DOING BUSINESS IN ISRAEL OR ISRAELI-CONTROLLED TERRITORIES.—Consistent with Section 102(b)(20)(B) of the Bipartisan Congressional Trade Priorities Act of 2015 (19 U.S.C. 4201(b)(20)(B)), the term “actions to boycott, divest from, or sanction Israel or persons doing business in Israel or Israeli-controlled territories” means actions by states, non-member states of the United Nations, international organizations, or affiliated agencies of international organizations that are politically motivated and are intended to penalize or otherwise limit commercial relations specifically with Israel or persons doing business in Israel or in Israeli-controlled territories.

(2) INTERNATIONAL GOVERNMENTAL ORGANIZATION.—The term “international governmental organization” includes the United Nations and the European Union.

(3) POLITICALLY MOTIVATED.—The term “politically motivated” means actions to impede or constrain commerce with Israel that are intended to coerce political action from or impose policy positions on Israel.

50 USC 4602. Congressional declaration of policy

(5) It is the policy of the United States-

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries OR international organizations, or efforts by foreign countries or international governmental organizations to collect information that have the effect of furthering restrictive trade practices or boycotts fostered or imposed by foreign countries or international governmental organizations, against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country or international governmental organization against a country friendly to the United States or against any United States person; and-

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

50 USC 4607. Foreign boycotts

(a) Prohibitions and exceptions

(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 4602 of this title, the President shall issue regulations prohibiting any United States person covered person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country or an international governmental organization, or efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by a foreign country or international governmental organization, against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country or international governmental organization (as the case may be), with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or

resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) (i) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country or with the international governmental organization (as the case may be). ~~Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.~~

(ii) Furnishing information to a foreign country or international governmental organization in response to efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting a restrictive trade practice or boycotts fostered or imposed by a foreign country or international governmental organization. Such information includes information about whether a person has, had had, or proposes to have any business relationship (including a relationship by way of sale, legal or commercial representation, shipping or other transport insurance, investment, or supply) with or in the country to which the restrictive trade practice or boycott applies, with any business concern organized under the laws of that country, with any national or resident of that country, or with any other person which is known or believed to be restricted from having any business relationship with or in a foreign country, or with any international governmental organization, that fosters or imposes the restrictive trade practice or boycott.

(iii) Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person covered person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for-

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or

the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a ~~United States person~~ covered person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a ~~United States person~~ covered person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign policy controls

(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 4605 of this title shall implement the policies set forth in section 4602(5) of this title.

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 4602(5) of this title shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 4602(5) of this title.

(c) Preemption

The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive

trade practices or boycotts fostered or imposed by foreign countries, or international; governmental organizations against other countries, or regarding efforts by foreign countries or international governmental organizations to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by foreign countries or international governmental organizations against other countries.

(d) COVERED PERSON DEFINED. –In this section, the term “covered person” mean—

(1) any domestic concern (including any permanent domestic establishment of any foreign concern);

(2) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the government of the United States or any State, territory, or possession of the United States, or any subdivision, department, agency, or commission of any such government, or

(4) an individual who is—

(A) a United States resident or national (other than an individual residing outside the United States and employed by other than a United States person);

(B) an owner, officer director, or employee of any domestic concern described in paragraph (a) or a foreign subsidiary or affiliate described in paragraph (2) or an officer, director, or employee of an entity described in paragraph (3); and

(C) Acting in the individual’s official capacity as such owner, director, or employee.

50 USC 4610. Violations

(a) In general

Except as provided in subsection (b) or or (j) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this chapter or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or \$50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this chapter or any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes-

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this chapter for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense-

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or \$1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than \$250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology-

(A) with the intent to export such goods or technology in violation of an export control imposed under section 4604 or 4605 of this title or any regulation, order, or license issued with respect to such control, or

(B) knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 4604 of this title (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 4605 of this title (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this chapter or any regulation, order, or license issued under this chapter shall be subject to the penalties set forth in subsection (a), except that in the case of an evasion of an export control imposed under section 4604 or 4605 of this title (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this chapter.

(c) Civil penalties; administrative sanctions

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed \$10,000 for each violation of this chapter or any regulation, order, or license issued under this chapter, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 4604 of this title or controls imposed on the export of defense articles and defense services under section 2778 of title 22 may not exceed \$100,000.

(2)(A) The authority under this chapter to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 4607(a) of this title.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this chapter for a violation of the regulations issued pursuant to section 4607(a) of this title may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 4607(a) of this title shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this chapter which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(d) Payment of penalties

The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) Refunds

Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c), or any amounts realized from the forfeiture of any property interest or proceeds pursuant to subsection (g), shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty imposed pursuant to subsection (c), within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, no action for the refund of any such penalty may be maintained in any court.

(f) Actions for recovery of penalties

In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Forfeiture of property interest and proceeds

(1) Any person who is convicted under subsection (a) or (b) of a violation of an export control imposed under section 4604 of this title (or any regulation, order, or license issued with respect to such control) shall, in addition to any other penalty, forfeit to the United States-

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(2) The procedures in any forfeiture under this subsection, and the duties and authority of the courts of the United States and the Attorney General with respect to any forfeiture action under this subsection or with respect to any property that may be subject to forfeiture under this subsection, shall be governed by the provisions of section 1963 of title 18.

(h) Prior convictions

(1) No person convicted of a violation of this chapter (or any regulation, license, or order issued under this chapter), any regulation, license, or order issued under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.], section 793, 794, or 798 of title 18, section 783(b) ¹ of this title, or section 2778 of title 22 shall be eligible, at the discretion of the Secretary, to apply for or use any export license under this chapter for a period of up to 10 years from the date of the conviction. The Secretary may revoke any export license under this chapter in which such person has an interest at the time of the conviction.

(2) The Secretary may exercise the authority under paragraph (1) with respect to any person related, through affiliation, ownership, control, or position of responsibility, to any person convicted of any violation of law set forth in paragraph (1), upon a showing of such relationship with the convicted party, and subject to the procedures set forth in section 4615(c) of this title.

(i) Other authorities

Nothing in subsection (c), (d), (f), (g), or (h) limits-

- (1) the availability of other administrative or judicial remedies with respect to violations of this chapter, or any regulation, order, or license issued under this chapter;
- (2) the authority to compromise and settle administrative proceedings brought with respect to violations of this chapter, or any regulation, order, or license issued under this chapter; or
- (3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 401(b) of title 22.

(j) Certain Violations of section 8(a).—

(1) IN GENERAL.—Whoever knowingly violates or conspires to or attempts to violate a regulation issued under section 8(a) prohibiting an action described in paragraph (2) shall be subject to only a monetary penalty under subsection (b) or (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705).”

(2) ACTIONS DESCRIBED.—An action described in this paragraph is an action described in subparagraphs (A) through (F) of section 8(a)(1) taken by a covered person (as defined in section 8(d)), or knowingly agreed to be taken by such a person, with respect to the person’s activities in the interstate or foreign commerce of the United States, with the intent to imply with, further, or support
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(A) any boycott fostered or imposed by an international governmental organization against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation; or

(B) efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered by a foreign country or international governmental organization against a country described in subparagraph (A).

[50 USC 1705](#) (not amended by S. 720, but part of amendment S. 720 makes to 50 USC 4610, above)

(a) Unlawful acts

It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this chapter.

(b) Civil penalty

A civil penalty may be imposed on any person who commits an unlawful act described in subsection (a) in an amount not to exceed the greater of-

(1) \$250,000; or

(2) an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(c) Criminal penalty

A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.

50 USC 4618. Definitions

As used in this chapter-

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or in intangible form, such as training or technical services) that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves;

(5) the term "export" means-

(A) an actual shipment, transfer, or transmission of goods or technology out of the United States;

(B) a transfer of goods or technology in the United States to an embassy or affiliate of a controlled country; or

(C) a transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient;

(6) the term "controlled country" means a controlled country under section 4604(b)(1) of this title;

(7) the term 'international governmental organization' includes the United Nations and the European Union;

~~(7)~~ (8) the term "United States" means the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, and includes the outer Continental Shelf, as defined in section 1331(a) of title 43; and

~~(8)~~ (9) the term "Secretary" means the Secretary of Commerce.