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108TH CONGRESS
2D SESSION

H. R. 4011

[Report No. 108–478, Part I]

To promote human rights and freedom in the Democratic People's Republic of Korea, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2004

Mr. LEACH (for himself, Mr. LANTOS, Mr. COX, Mr. FALEOMAVAEGA, Mr. SMITH of New Jersey, Mr. BERMAN, Mr. ROYCE, Mr. ACKERMAN, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MAY 4, 2004

Reported from the Committee on International Relations with an amendment
[Strike out all after the enacting clause and insert the part printed in italic]

MAY 4, 2004

Referral to the Committee on the Judiciary extended for a period ending not later than July 6, 2004

JULY 6, 2004

Referral to the Committee on the Judiciary extended for a period ending not later than July 16, 2004

JULY 16, 2004

Additional sponsors: Mr. GALLEGLY, Ms. ROS-LEHTINEN, Mr. BURTON of Indiana, Mr. PAYNE, Mr. McCOTTER, Mr. BLUMENAUER, Mr. PITTS, Mr. FRANKS of Arizona, Mr. TIAHRT, Mr. COLE, Mr. ROHRBACHER, Mr. SHIMKUS, Ms. BORDALLO, Mr. BALLENGER, Mr. HONDA, Mr. EVANS, Mrs. JO ANN DAVIS of Virginia, Mr. GRIJALVA, Mr. WEXLER, Mr. DEUTSCH, and Mr. PLATTS

JULY 16, 2004

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on March 23, 2004]

A BILL

To promote human rights and freedom in the Democratic People's Republic of Korea, 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 “North Korean Human*
5 *Rights Act of 2004”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents for this Act is as follows:*

- Sec. 1. Short title.*
- Sec. 2. Table of contents.*
- Sec. 3. Findings.*
- Sec. 4. Purposes.*
- Sec. 5. Definitions.*

TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

- Sec. 101. Sense of congress regarding negotiations with North Korea.*
- Sec. 102. Support for human rights and democracy programs.*
- Sec. 103. Radio broadcasting to North Korea.*
- Sec. 104. Actions to promote freedom of information.*
- Sec. 105. United Nations Commission on Human Rights.*

TITLE II—ASSISTING NORTH KOREANS IN NEED

- Sec. 201. Report on United States humanitarian assistance.*
- Sec. 202. Assistance provided inside North Korea.*
- Sec. 203. Assistance provided outside of North Korea.*

TITLE III—PROTECTING NORTH KOREAN REFUGEES

- Sec. 301. United States policy toward refugees and defectors.*
- Sec. 302. Eligibility for refugee or asylum consideration.*

Sec. 303. *Refugee status.*
Sec. 304. *Pursuit of first asylum policy.*
Sec. 305. *United Nations High Commissioner for Refugees.*
Sec. 306. *Humanitarian parole.*
Sec. 307. *North Korean status adjustment.*
Sec. 308. *Temporary protected status.*
Sec. 309. *Right to accept employment.*
Sec. 310. *Annual reports.*

1 **SEC. 3. FINDINGS.**

2 *Congress makes the following findings:*

3 *(1) According to the Department of State, the*
4 *Government of North Korea is “a dictatorship under*
5 *the absolute rule of Kim Jong Il” that continues to*
6 *commit numerous, serious human rights abuses.*

7 *(2) The Government of North Korea attempts to*
8 *control all information, artistic expression, academic*
9 *works, and media activity inside North Korea and*
10 *strictly curtails freedom of speech and access to for-*
11 *oreign broadcasts.*

12 *(3) The Government of North Korea subjects all*
13 *its citizens to systematic, intensive political and ideo-*
14 *logical indoctrination in support of the cult of person-*
15 *ality glorifying Kim Jong Il and the late Kim Il*
16 *Sung that approaches the level of a state religion.*

17 *(4) The Government of North Korea divides its*
18 *population into categories, based on perceived loyalty*
19 *to the leadership, which determines access to food, em-*
20 *ployment, higher education, place of residence, med-*
21 *ical facilities, and other resources.*

1 (5) According to the Department of State, “[t]he
2 [North Korean] Penal Code is [d]raconian, stipu-
3 lating capital punishment and confiscation of assets
4 for a wide variety of ‘crimes against the revolution,’
5 including defection, attempted defection, slander of
6 the policies of the Party or State, listening to foreign
7 broadcasts, writing ‘reactionary’ letters, and pos-
8 sessing reactionary printed matter”.

9 (6) The Government of North Korea executes po-
10 litical prisoners, opponents of the regime, some repa-
11 triated defectors, some members of underground
12 churches, and others, sometimes at public meetings at-
13 tended by workers, students, and schoolchildren.

14 (7) The Government of North Korea holds an es-
15 timated 200,000 political prisoners in camps that its
16 State Security Agency manages through the use of
17 forced labor, beatings, torture, and executions, and in
18 which many prisoners also die from disease, starva-
19 tion, and exposure.

20 (8) According to eyewitness testimony provided
21 to the United States Congress by North Korean camp
22 survivors, camp inmates have been used as sources of
23 slave labor for the production of export goods, as tar-
24 gets for martial arts practice, and as experimental

1 *victims in the testing of chemical and biological poi-*
2 *sons.*

3 (9) *According to credible reports, including eye-*
4 *witness testimony provided to the United States Con-*
5 *gress, North Korean Government officials prohibit live*
6 *births in prison camps, and forced abortion and the*
7 *killing of newborn babies are standard prison prac-*
8 *tices.*

9 (10) *According to the Department of State,*
10 *“[g]enuine religious freedom does not exist in North*
11 *Korea” and, according to the United States Commis-*
12 *sion on International Religious Freedom, “[t]he*
13 *North Korean state severely represses public and pri-*
14 *vate religious activities” with penalties that report-*
15 *edly include arrest, imprisonment, torture, and some-*
16 *times execution.*

17 (11) *More than 2,000,000 North Koreans are es-*
18 *timated to have died of starvation since the early*
19 *1990s because of the failure of the centralized agricul-*
20 *tural and public distribution systems operated by the*
21 *Government of North Korea.*

22 (12) *According to a 2002 United Nations-Euro-*
23 *pean Union survey, nearly one out of every ten chil-*
24 *dren in North Korea suffers from acute malnutrition*

1 *and four out of every ten children in North Korea are*
2 *chronically malnourished.*

3 *(13) Since 1995, the United States has provided*
4 *more than 2,000,000 tons of humanitarian food as-*
5 *stance to the people of North Korea, primarily*
6 *through the World Food Program.*

7 *(14) Although United States food assistance has*
8 *undoubtedly saved many North Korean lives and*
9 *there have been minor improvements in transparency*
10 *relating to the distribution of such assistance in*
11 *North Korea, the Government of North Korea con-*
12 *tinues to deny the World Food Program forms of ac-*
13 *cess necessary to properly monitor the delivery of food*
14 *aid, including the ability to conduct random site vis-*
15 *its, the use of native Korean-speaking employees, and*
16 *travel access throughout North Korea.*

17 *(15) The risk of starvation, the threat of persecu-*
18 *tion, and the lack of freedom and opportunity in*
19 *North Korea have caused many thousands, perhaps*
20 *even hundreds of thousands, of North Koreans to flee*
21 *their homeland, primarily into China.*

22 *(16) North Korean women and girls, particu-*
23 *larly those who have fled into China, are at risk of*
24 *being kidnapped, trafficked, and sexually exploited*

1 *inside China, where many are sold as brides or con-*
2 *cubines, or forced to work as prostitutes.*

3 *(17) The Governments of China and North Korea*
4 *have been conducting aggressive campaigns to locate*
5 *North Koreans who are in China without permission*
6 *and to forcibly return them to North Korea, where*
7 *they routinely face torture and imprisonment, and*
8 *sometimes execution.*

9 *(18) Despite China's obligations as a party to*
10 *the 1951 United Nations Convention Relating to the*
11 *Status of Refugees and the 1967 Protocol Relating to*
12 *the Status of Refugees China routinely classifies*
13 *North Koreans seeking asylum in China as mere "eco-*
14 *nomic migrants" and returns them to North Korea*
15 *without regard to the serious threat of persecution*
16 *they face upon their return.*

17 *(19) The Government of China does not provide*
18 *North Koreans whose asylum requests are rejected a*
19 *right to have the rejection reviewed prior to deporta-*
20 *tion despite its obligations under the 1951 United Na-*
21 *tions Convention Relating to the Status of Refugees*
22 *and the 1967 Protocol Relating to the Status of Refu-*
23 *gees.*

24 *(20) North Koreans who seek asylum while in*
25 *China are routinely imprisoned and tortured, and in*

1 *some cases killed, after they are returned to North*
2 *Korea.*

3 *(21) The Government of China has detained,*
4 *convicted, and imprisoned foreign aid workers at-*
5 *tempting to assist North Korean refugees, including*
6 *the Reverend Choi Bong Il and Mr. Kim Hee Tae, in*
7 *proceedings that did not comply with Chinese law or*
8 *international standards.*

9 *(22) In January 2000, North Korean agents in-*
10 *side China allegedly abducted the Reverend Kim*
11 *Dong-shik, a United States permanent resident and*
12 *advocate for North Korean refugees, whose condition*
13 *and whereabouts remain unknown.*

14 *(23) Between 1994 and 2003, South Korea has*
15 *admitted approximately 3,800 North Korean refugees*
16 *for domestic resettlement, a number small in compari-*
17 *son with the total number of North Korean escapees,*
18 *but far greater than the number legally admitted by*
19 *any other country.*

20 *(24) Although the principal responsibility for*
21 *North Korean refugee resettlement naturally falls to*
22 *the Government of South Korea, the United States*
23 *should play a leadership role in focusing inter-*
24 *national attention on the plight of these refugees, for-*
25 *mulating international solutions to that profound hu-*

1 *humanitarian dilemma, and making prudent arrange-*
2 *ments to accept a credible number of refugees for do-*
3 *mestic resettlement.*

4 *(25) In addition to infringing the rights of its*
5 *own citizens, the Government of North Korea has been*
6 *responsible in years past for the abduction of numer-*
7 *ous citizens of South Korea and Japan, whose condi-*
8 *tion and whereabouts remain unknown.*

9 **SEC. 4. PURPOSES.**

10 *The purposes of this Act are—*

11 *(1) to promote respect for and protection of fun-*
12 *damental human rights in North Korea;*

13 *(2) to promote a more durable humanitarian so-*
14 *lution to the plight of North Korean refugees;*

15 *(3) to promote increased monitoring, access, and*
16 *transparency in the provision of humanitarian assist-*
17 *ance inside North Korea;*

18 *(4) to promote the free flow of information into*
19 *and out of North Korea; and*

20 *(5) to promote progress toward the peaceful re-*
21 *unification of the Korean peninsula under a demo-*
22 *cratic system of government.*

23 **SEC. 5. DEFINITIONS.**

24 *In this Act:*

1 (1) *APPROPRIATE CONGRESSIONAL COMMIT-*
2 *TEES.—The term “appropriate congressional commit-*
3 *tees” means—*

4 (A) *the Committee on International Rela-*
5 *tions of the House of Representatives; and*

6 (B) *the Committee on Foreign Relations of*
7 *the Senate.*

8 (2) *CHINA.—The term “China” means the Peo-*
9 *ple’s Republic of China.*

10 (3) *HUMANITARIAN ASSISTANCE.—The term “hu-*
11 *manitarian assistance” means assistance to meet hu-*
12 *manitarian needs, including needs for food, medicine,*
13 *medical supplies, clothing, and shelter.*

14 (4) *NORTH KOREA.—The term “North Korea”*
15 *means the Democratic People’s Republic of Korea.*

16 (5) *NORTH KOREANS.—The term “North Kore-*
17 *ans” means persons who are citizens or nationals of*
18 *North Korea.*

19 (6) *SOUTH KOREA.—The term “South Korea”*
20 *means the Republic of Korea.*

1 **TITLE I—PROMOTING THE**
2 **HUMAN RIGHTS OF NORTH**
3 **KOREANS**

4 **SEC. 101. SENSE OF CONGRESS REGARDING NEGOTIATIONS**
5 **WITH NORTH KOREA.**

6 *It is the sense of Congress that the human rights of*
7 *North Koreans should remain a key element in future nego-*
8 *tiations between the United States, North Korea, and other*
9 *concerned parties in Northeast Asia.*

10 **SEC. 102. SUPPORT FOR HUMAN RIGHTS AND DEMOCRACY**
11 **PROGRAMS.**

12 *(a) SUPPORT.—The President is authorized to provide*
13 *grants to private, nonprofit organizations to support pro-*
14 *grams that promote human rights, democracy, rule of law,*
15 *and the development of a market economy in North Korea.*

16 *(b) AUTHORIZATION OF APPROPRIATIONS.—*

17 *(1) IN GENERAL.—There are authorized to be ap-*
18 *propriated to the President \$2,000,000 for each of the*
19 *fiscal years 2005 through 2008 to carry out this sec-*
20 *tion.*

21 *(2) AVAILABILITY.—Amounts appropriated pur-*
22 *suant to the authorization of appropriations under*
23 *paragraph (1) are authorized to remain available*
24 *until expended.*

1 **SEC. 103. RADIO BROADCASTING TO NORTH KOREA.**

2 (a) *SENSE OF CONGRESS.*—*It is the sense of Congress*
3 *that the United States should facilitate the unhindered dis-*
4 *semination of information in North Korea by increasing*
5 *its support for radio broadcasting to North Korea, and that*
6 *the Broadcasting Board of Governors should increase broad-*
7 *casts to North Korea from current levels, with a goal of pro-*
8 *viding 12-hour-per-day broadcasting to North Korea, in-*
9 *cluding broadcasts by Radio Free Asia and Voice of Amer-*
10 *ica.*

11 (b) *REPORT.*—*Not later than 120 days after the date*
12 *of the enactment of this Act, the Broadcasting Board of Gov-*
13 *ernors shall submit to the appropriate congressional com-*
14 *mittees a report that—*

15 (1) *describes the status of current United States*
16 *broadcasting to North Korea; and*

17 (2) *outlines a plan for increasing such broad-*
18 *casts to 12 hours per day, including a detailed de-*
19 *scription of the technical and fiscal requirements nec-*
20 *essary to implement the plan.*

21 **SEC. 104. ACTIONS TO PROMOTE FREEDOM OF INFORMA-**
22 **TION.**

23 (a) *ACTIONS.*—*The President is authorized to take*
24 *such actions as may be necessary to increase the avail-*
25 *ability of information inside North Korea by increasing the*
26 *availability of sources of information not controlled by the*

1 *Government of North Korea, including sources such as ra-*
2 *dios capable of receiving broadcasting from outside North*
3 *Korea.*

4 *(b) AUTHORIZATION OF APPROPRIATIONS.—*

5 *(1) IN GENERAL.—There are authorized to be ap-*
6 *propriated to the President \$2,000,000 for each of the*
7 *fiscal years 2005 through 2008 to carry out subsection*
8 *(a).*

9 *(2) AVAILABILITY.—Amounts appropriated pur-*
10 *suant to the authorization of appropriations under*
11 *paragraph (1) are authorized to remain available*
12 *until expended.*

13 *(c) REPORT.—Not later than 1 year after the date of*
14 *the enactment of this Act, and in each of the 3 years there-*
15 *after, the Secretary of State, after consultation with the*
16 *heads of other appropriate Federal departments and agen-*
17 *cies, shall submit to the appropriate congressional commit-*
18 *tees a report, in classified form, on actions taken pursuant*
19 *to this section.*

20 **SEC. 105. UNITED NATIONS COMMISSION ON HUMAN**
21 **RIGHTS.**

22 *It is the sense of Congress that the United Nations has*
23 *a significant role to play in promoting and improving*
24 *human rights in North Korea, that the adoption by the*
25 *United Nations Commission on Human Rights of Resolu-*

1 *tion 2003/10 on the situation of human rights in North*
2 *Korea was a positive step, and that the severe human rights*
3 *violations within North Korea warrant—*

4 (1) *an additional country-specific resolution by*
5 *the United Nations Commission on Human Rights*
6 *that includes the language necessary to authorize the*
7 *appointment of a Special Rapporteur of the United*
8 *Nations Commission on Human Rights on the situa-*
9 *tion of human rights in North Korea; and*

10 (2) *country-specific attention and reporting by*
11 *the United Nations Working Group on Arbitrary De-*
12 *tention, the Working Group on Enforced and Involun-*
13 *tary Disappearances, the Special Rapporteur on*
14 *Extrajudicial, Summary, or Arbitrary Executions,*
15 *the Special Rapporteur on the Right to Food, the*
16 *Special Rapporteur on the Promotion and Protection*
17 *of the Right to Freedom of Opinion and Expression,*
18 *the Special Rapporteur on Freedom of Religion or*
19 *Belief, and the Special Rapporteur on Violence*
20 *Against Women.*

1 **TITLE II—ASSISTING NORTH**
2 **KOREANS IN NEED**

3 **SEC. 201. REPORT ON UNITED STATES HUMANITARIAN AS-**
4 **SISTANCE.**

5 (a) *REPORT.*—Not later than 180 days after the date
6 of the enactment of this Act, and in each of the 2 years
7 thereafter, the Administrator of the United States Agency
8 for International Development, in conjunction with the Sec-
9 retary of State, shall submit to the appropriate congres-
10 sional committees a report that describes—

11 (1) *all activities to provide humanitarian assist-*
12 *ance inside North Korea, and to North Koreans out-*
13 *side of North Korea, that receive United States fund-*
14 *ing;*

15 (2) *any improvements in humanitarian trans-*
16 *parency, monitoring, and access inside North Korea*
17 *during the previous 1-year period, including progress*
18 *toward meeting the conditions identified in para-*
19 *graphs (1) through (4) of section 202(b); and*

20 (3) *specific efforts to secure improved humani-*
21 *tarian transparency, monitoring, and access inside*
22 *North Korea made by the United States and United*
23 *States grantees, including the World Food Program,*
24 *during the previous 1-year period.*

1 (b) *FORM.*—*The information required by subsection*
2 *(a)(1) may be provided in classified form if necessary.*

3 **SEC. 202. ASSISTANCE PROVIDED INSIDE NORTH KOREA.**

4 (a) *HUMANITARIAN ASSISTANCE THROUGH NON-*
5 *GOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS.*—

6 (1) *ASSISTANCE.*—*The President is authorized to*
7 *provide assistance, including in the form of grants, to*
8 *the World Food Program and to United States non-*
9 *governmental organizations for the purpose of pro-*
10 *viding humanitarian assistance to North Koreans in-*
11 *side North Korea.*

12 (2) *SENSE OF CONGRESS.*—*It is the sense of*
13 *Congress that significant increases above current lev-*
14 *els of United States support for humanitarian assist-*
15 *ance provided inside North Korea should be condi-*
16 *tioned upon substantial improvements in trans-*
17 *parency, monitoring, and access to vulnerable popu-*
18 *lations throughout North Korea, and that significant*
19 *improvements in those areas therefore would be re-*
20 *quired to justify appropriation and obligation of the*
21 *full amounts authorized to be appropriated by this*
22 *subsection.*

23 (3) *AUTHORIZATION OF APPROPRIATIONS.*—

24 (A) *IN GENERAL.*—*There are authorized to*
25 *be appropriated to the President not less than*

1 \$100,000,000 for each of the fiscal years 2005
2 through 2008 to carry out this subsection.

3 (B) AVAILABILITY.—Amounts appropriated
4 pursuant to the authorization of appropriations
5 under subparagraph (A) are authorized to re-
6 main available until expended.

7 (b) HUMANITARIAN ASSISTANCE TO THE GOVERNMENT
8 OF NORTH KOREA.—No department, agency, or entity of
9 the United States Government may provide humanitarian
10 assistance to any department, agency, or entity of the Gov-
11 ernment of North Korea unless such United States Govern-
12 ment department, agency, or entity certifies in writing to
13 the appropriate congressional committees that the Govern-
14 ment of North Korea has taken steps to ensure that—

15 (1) such assistance is delivered, distributed, and
16 monitored according to internationally recognized hu-
17 manitarian standards;

18 (2) such assistance is provided on a needs basis,
19 and is not used as a political reward or tool of coer-
20 cion;

21 (3) such assistance reaches the intended bene-
22 ficiaries, who are informed of the source of the assist-
23 ance; and

1 (4) *humanitarian access to all vulnerable groups*
2 *in North Korea is allowed, no matter where in the*
3 *country they may be located.*

4 (c) *NONHUMANITARIAN ASSISTANCE TO THE GOVERN-*
5 *MENT OF NORTH KOREA.—No department, agency, or enti-*
6 *ty of the United States Government may provide non-*
7 *humanitarian assistance to any department, agency, or en-*
8 *tity of the Government of North Korea unless such United*
9 *States Government department, agency, or entity certifies*
10 *in writing to the appropriate congressional committees that*
11 *the Government of North Korea has made substantial*
12 *progress toward—*

13 (1) *respecting and protecting basic human*
14 *rights, including freedom of religion, of the people of*
15 *North Korea;*

16 (2) *providing for significant family reunification*
17 *between North Koreans and their descendants and rel-*
18 *atives in the United States;*

19 (3) *fully disclosing all information regarding*
20 *citizens of Japan and the Republic of Korea abducted*
21 *by the Government of North Korea;*

22 (4) *allowing such abductees, along with their*
23 *families, complete and genuine freedom to leave North*
24 *Korea and return to the abductees original home*
25 *countries;*

1 (5) *significantly reforming its prison and labor*
2 *camp system, and subjecting such reforms to inde-*
3 *pendent international monitoring; and*

4 (6) *decriminalizing political expression and ac-*
5 *tivity.*

6 (d) *WAIVER.—The President may waive the prohibi-*
7 *tion contained in subsection (b) or (c) if the President deter-*
8 *mines that it is in the national security interest of the*
9 *United States to do so. Prior to exercising the waiver au-*
10 *thority contained in the preceding sentence, the President*
11 *shall transmit to the appropriate congressional committees*
12 *a report that contains the determination of the President*
13 *pursuant to the preceding sentence and a description of the*
14 *assistance to be provided.*

15 **SEC. 203. ASSISTANCE PROVIDED OUTSIDE OF NORTH**
16 **KOREA.**

17 (a) *ASSISTANCE.—The President is authorized to pro-*
18 *vide assistance to support organizations or persons that*
19 *provide humanitarian assistance or legal assistance to*
20 *North Koreans who are outside of North Korea without the*
21 *permission of the Government of North Korea.*

22 (b) *TYPES OF ASSISTANCE.—Assistance provided*
23 *under subsection (a) should be used to provide—*

24 (1) *humanitarian assistance to North Korean*
25 *refugees, defectors, migrants, and orphans outside of*

1 *North Korea, which may include support for refugee*
2 *camp or temporary settlement;*

3 (2) *legal assistance to North Koreans who are*
4 *seeking to apply for refugee status, asylum, parole, or*
5 *other similar forms of protection and resettlement;*
6 *and*

7 (3) *humanitarian assistance and legal assistance*
8 *to North Korean women outside of North Korea who*
9 *are victims of trafficking, as defined in section*
10 *103(14) of the Trafficking Victims Protection Act of*
11 *2000 (22 U.S.C. 7102(14)), or are in danger of being*
12 *trafficked.*

13 (c) *AUTHORIZATION OF APPROPRIATIONS.—*

14 (1) *IN GENERAL.—In addition to funds otherwise*
15 *available for such purposes, there are authorized to be*
16 *appropriated to the President \$20,000,000 for each of*
17 *the fiscal years 2005 through 2008 to carry out this*
18 *section.*

19 (2) *AVAILABILITY.—Amounts appropriated pur-*
20 *suant to subsection (a) are authorized to remain*
21 *available until expended.*

1 **TITLE III—PROTECTING NORTH**
2 **KOREAN REFUGEES**

3 **SEC. 301. UNITED STATES POLICY TOWARD REFUGEES AND**
4 **DEFECTORS.**

5 (a) *REPORT.*—Not later than 120 days after the date
6 of the enactment of this Act, the Secretary of State, in co-
7 operation with the Secretary of Homeland Security, the Di-
8 rector of Central Intelligence, and the heads of other appro-
9 priate Federal departments and agencies, shall submit to
10 the appropriate congressional committees a report in un-
11 classified form that describes the situation of North Korean
12 refugees and explains United States Government policy to-
13 ward North Korean refugees and defectors.

14 (b) *CONTENTS.*—The report shall include—

15 (1) *information on North Koreans currently out-*
16 *side of North Korea without permission (including*
17 *refugees, defectors, and migrants), such as their esti-*
18 *mated numbers and the countries and regions in*
19 *which they are currently residing;*

20 (2) *an assessment of the circumstances facing*
21 *North Korean refugees and migrants in hiding, par-*
22 *ticularly in China, and of the circumstances they face*
23 *when forcibly returned to North Korea;*

24 (3) *an assessment of whether North Koreans in*
25 *China have effective access to personnel of the United*

1 *Nations High Commissioner for Refugees, and of*
2 *whether the Government of China is fulfilling its obli-*
3 *gations under the 1951 Convention Relating to the*
4 *Status of Refugees, particularly Articles 31, 32, and*
5 *33 of such Convention;*

6 *(4) an assessment of whether North Koreans*
7 *presently have effective access to United States refugee*
8 *and asylum processing, and of United States policy*
9 *toward North Koreans who may present themselves at*
10 *United States embassies or consulates and request*
11 *protection as refugees or asylum seekers and resettle-*
12 *ment in the United States;*

13 *(5) the total number of North Koreans who have*
14 *been admitted into the United States as refugees or*
15 *asylees in each of the past five years; and*

16 *(6) an estimate of the number of North Koreans*
17 *with family connections to United States citizens.*

18 **SEC. 302. ELIGIBILITY FOR REFUGEE OR ASYLUM CONSID-**
19 **ERATION.**

20 *(a) PURPOSE.—The purpose of this section is to ensure*
21 *that North Koreans are not barred from eligibility for ref-*
22 *ugee status or asylum in the United States on account of*
23 *any legal right to citizenship they may enjoy under the*
24 *Constitution of the Republic of Korea. It is not intended*
25 *in any way to prejudice whatever rights to citizenship*

1 *North Koreans may enjoy under the Constitution of the Re-*
2 *public of Korea.*

3 (b) *TREATMENT OF NATIONALS OF NORTH KOREA.—*
4 *For purposes of eligibility for refugee status under section*
5 *207 of the Immigration and Nationality Act (8 U.S.C.*
6 *1157), or for asylum under section 208 of such Act (8*
7 *U.S.C. 1158), a national of the Democratic People’s Repub-*
8 *lic of Korea shall not be considered a national of the Repub-*
9 *lic of Korea.*

10 **SEC. 303. REFUGEE STATUS.**

11 *The Secretary of State shall designate natives or citi-*
12 *zens of North Korea who apply for refugee status under sec-*
13 *tion 207 of the Immigration and Nationality Act (8 U.S.C.*
14 *1157), and who are former political prisoners, members of*
15 *persecuted religious groups, forced-labor conscripts, victims*
16 *of debilitating malnutrition, persons deprived of profes-*
17 *sional credentials or subjected to other disproportionately*
18 *harsh or discriminatory treatment resulting from their per-*
19 *ceived or actual political or religious beliefs or activities,*
20 *or others who appear to have a credible claim of other perse-*
21 *cution, as a Priority 2 group of special concern for purposes*
22 *of refugee resettlement.*

23 **SEC. 304. PURSUIT OF FIRST ASYLUM POLICY.**

24 *It is the sense of Congress that the United States should*
25 *pursue an international agreement to adopt an effective*

1 *“first asylum” policy, modeled on the first asylum policy*
2 *for Vietnamese refugees, that guarantees safe haven and as-*
3 *sistance to North Korean refugees, until such time as condi-*
4 *tions in North Korea allow for their return.*

5 **SEC. 305. UNITED NATIONS HIGH COMMISSIONER FOR REF-**
6 **UGEES.**

7 (a) *ACTIONS IN CHINA.—It is the sense of Congress*
8 *that—*

9 (1) *the Government of China has obligated itself*
10 *to provide the United Nations High Commissioner for*
11 *Refugees (UNHCR) with unimpeded access to North*
12 *Koreans inside its borders to enable the UNHCR to*
13 *determine whether they are refugees and whether they*
14 *require assistance, pursuant to the 1951 United Na-*
15 *tions Convention Relating to the Status of Refugees,*
16 *the 1967 Protocol Relating to the Status of Refugees,*
17 *and Article III, paragraph 5 of the 1995 Agreement*
18 *on the Upgrading of the UNHCR Mission in the Peo-*
19 *ple’s Republic of China to UNHCR Branch Office in*
20 *the People’s Republic of China (referred to in this sec-*
21 *tion as the “UNHCR Mission Agreement”);*

22 (2) *the United States and other UNHCR donor*
23 *governments should persistently and at the highest*
24 *levels urge the Government of China to abide by its*

1 *previous commitments to allow UNHCR unimpeded*
2 *access to North Korean refugees inside China;*

3 *(3) the UNHCR, in order to effectively carry out*
4 *its mandate to protect refugees, should liberally em-*
5 *ploy as professionals or Experts on Mission persons*
6 *with significant experience in humanitarian assist-*
7 *ance work among displaced North Koreans in China;*

8 *(4) the UNHCR, in order to effectively carry out*
9 *its mandate to protect refugees, should liberally con-*
10 *tract with appropriate nongovernmental organiza-*
11 *tions that have a proven record of providing humani-*
12 *tarian assistance to displaced North Koreans in*
13 *China; and*

14 *(5) should the Government of China begin ac-*
15 *tively fulfilling its obligations toward North Korean*
16 *refugees, all countries, including the United States,*
17 *and relevant international organizations should in-*
18 *crease levels of humanitarian assistance provided in-*
19 *side China to help defray costs associated with the*
20 *North Korean refugee presence.*

21 *(b) ARBITRATION PROCEEDINGS.—It is further the*
22 *sense of Congress that—*

23 *(1) if the Government of China continues to*
24 *refuse to provide the UNHCR with access to North*
25 *Koreans within its borders, the UNHCR should ini-*

1 *tiate arbitration proceedings pursuant to Article XVI*
2 *of the UNHCR Mission Agreement and appoint an*
3 *arbitrator for the UNHCR; and*

4 *(2) because access to refugees is essential to the*
5 *UNHCR mandate and to the purpose of a UNHCR*
6 *branch office, a failure to assert those arbitration*
7 *rights in present circumstances would constitute a*
8 *significant abdication by the UNHCR of one of its*
9 *core responsibilities.*

10 **SEC. 306. HUMANITARIAN PAROLE.**

11 *(a) PREREQUISITES FOR ELIGIBILITY.—Because*
12 *North Korean refugees do not enjoy regular, unimpeded,*
13 *and effective access to the United States refugee program—*

14 *(1) for purposes of section 212(d)(5)(A) of the*
15 *Immigration and Nationality Act (8 U.S.C.*
16 *1182(d)(5)(A)), the parole of any alien who is a na-*
17 *tive or citizen of North Korea seeking to enter the*
18 *United States, and who is a victim of North Korean*
19 *Government malfeasance, shall be considered to be of*
20 *significant public benefit; and*

21 *(2) for purposes of section 212(d)(5)(B) of the*
22 *Immigration and Nationality Act (8 U.S.C.*
23 *1182(d)(5)(B)), the parole of any alien who is a ref-*
24 *ugee and a native or citizen of North Korea seeking*
25 *to enter the United States, and who is a victim of*

1 *North Korean Government malfeasance, shall be con-*
2 *sidered to be for compelling reasons in the public in-*
3 *terest with respect to that particular alien.*

4 *(b) DEFINITION.—For purposes of this subsection, a*
5 *victim of North Korean Government malfeasance is a*
6 *former political prisoner, a member of a persecuted reli-*
7 *gious group, a forced-labor conscript, a victim of debili-*
8 *tating malnutrition, a person deprived of professional cre-*
9 *dentials or subjected to other disproportionately harsh or*
10 *discriminatory treatment resulting from his perceived or*
11 *actual political or religious beliefs or activities, or a person*
12 *who appears to have a credible claim of other persecution*
13 *by the Government of North Korea.*

14 *(c) DISCRETION.—Nothing in this section shall be con-*
15 *strued to prohibit the Secretary of Homeland Security from*
16 *establishing conditions for parole under section 212(d)(5)*
17 *of the Immigration and Nationality Act (8 U.S.C.*
18 *1182(d)(5)), or from denying parole to such aliens who are*
19 *otherwise ineligible for parole.*

20 *(d) LENGTH OF PAROLE.—*

21 *(1) IN GENERAL.—Notwithstanding section*
22 *212(d)(5) of the Immigration and Nationality Act (8*
23 *U.S.C. 1182(d)(5)), if parole is granted to an alien*
24 *who is a native or citizen of North Korea pursuant*
25 *to subsection (a), the parole shall be effective until the*

1 *final resolution of any application for adjustment of*
2 *status made pursuant to section 204 of this Act.*

3 (2) *DENIAL OF ADJUSTMENT OF STATUS.*—*If an*
4 *application for adjustment of status made pursuant*
5 *to section 204 is denied, the Secretary of Homeland*
6 *Security may, in the discretion of the Secretary, pa-*
7 *role the alien described in paragraph (1) pursuant to*
8 *section 212(d)(5) of the Immigration and Nationality*
9 *Act (8 U.S.C. 1182(d)(5)).*

10 (3) *EXTENSION OF PAROLE PERIOD.*—*If no ap-*
11 *plication for adjustment of status is made pursuant*
12 *to section 204 within 18 months after parole is grant-*
13 *ed to an alien described in paragraph (1), the Sec-*
14 *retary of Homeland Security may, in the discretion*
15 *of the Secretary, extend the parole period temporarily*
16 *under conditions that the Secretary prescribes.*

17 (4) *NO GRANT OF PAROLE.*—*If parole is not*
18 *granted to an alien described in paragraph (2), the*
19 *alien shall be treated pursuant to section 212(d)(5) of*
20 *the Immigration and Nationality Act (8 U.S.C.*
21 *1182(d)(5)) as if the purposes of the alien's parole*
22 *have been served.*

23 (5) *TERMINATION OF PAROLE.*—*Notwithstanding*
24 *any other provision of this section, the parole period*

1 of an alien described in paragraph (1) shall termi-
2 nate when the Secretary of State determines that—

3 (A) the human rights record of North Korea,
4 according to the Country Report on Human
5 Rights Practices issued by the Department of
6 State, Bureau of Democracy, Human Rights,
7 and Labor, is satisfactory; and

8 (B) North Korea is no longer on the list of
9 nations designated as State sponsors of terrorism
10 by the Secretary of State.

11 (e) *SUBSEQUENT REMOVAL PROCEEDINGS.*—Nothing
12 in this section shall be construed to prohibit the Secretary
13 of Homeland Security from instituting removal proceedings
14 against an alien paroled into the United States under this
15 section for—

16 (1) conduct committed after the parole of the
17 alien into the United States; or

18 (2) conduct or a condition that was not disclosed
19 to the Secretary prior to the parole of the alien into
20 the United States.

21 **SEC. 307. NORTH KOREAN STATUS ADJUSTMENT.**

22 (a) *STATUS ADJUSTMENT.*—Notwithstanding section
23 245(c) of the Immigration and Nationality Act (8 U.S.C.
24 1255(c)), the status of any alien who is a native or citizen
25 of North Korea, has been inspected and admitted or paroled

1 *into the United States subsequent to July 1, 2003, and has*
2 *been physically present in the United States for at least*
3 *1 year, may be adjusted by the Secretary of Homeland Se-*
4 *curity, in the discretion of the Secretary and under such*
5 *regulations as the Secretary may prescribe, to that of an*
6 *alien lawfully admitted for permanent residence if—*

7 (1) *the alien makes an application for such ad-*
8 *justment within 18 months after parole is granted;*

9 (2) *the alien is eligible to receive an immigrant*
10 *visa and is admissible to the United States for per-*
11 *manent residence; and*

12 (3) *the Secretary of Homeland Security deter-*
13 *mines that the alien has complied with the require-*
14 *ments of subsection (b).*

15 (b) *REQUIRED COOPERATION WITH THE UNITED*
16 *STATES GOVERNMENT.—The requirements of this sub-*
17 *section shall be satisfied if—*

18 (1) *the Secretary of Homeland Security deter-*
19 *mines that—*

20 (A) *the alien is in possession of critical reli-*
21 *able information concerning the activities of the*
22 *Government of North Korea or its agents, rep-*
23 *resentatives, or officials, and the alien has co-*
24 *operated or is currently cooperating, fully and in*
25 *good faith, with appropriate persons within the*

1 *United States Government regarding such infor-*
2 *mation; or*

3 *(B) the alien is not in possession of critical*
4 *reliable information concerning the activities of*
5 *the Government of North Korea or its agents,*
6 *representatives, or officials; and*

7 *(2) the Secretary of Homeland Security deter-*
8 *mines that the alien—*

9 *(A) did not enter the United States in a*
10 *then-current capacity as an agent, representa-*
11 *tive, or official of the Government of North*
12 *Korea, or for any purpose contrary to the pur-*
13 *poses of this Act or for any unlawful purpose;*

14 *(B) is not, since entering the United States*
15 *or at the time during which the application for*
16 *adjustment of status is filed or in process, an*
17 *agent, representative, or official of the Govern-*
18 *ment of North Korea, or during such period act-*
19 *ing for any purpose contrary to the purposes of*
20 *this Act or for any unlawful purpose; and*

21 *(C) in the judgment of the Secretary of*
22 *Homeland Security, is not likely to become an*
23 *agent, representative, or official of the Govern-*
24 *ment of North Korea, or act for any purpose con-*

1 *trary to the purposes of this Act or for any un-*
2 *lawful purpose.*

3 (c) *EFFECT ON IMMIGRATION AND NATIONALITY*
4 *ACT.—*

5 (1) *DEFINITIONS.—The definitions in subsections*
6 *(a) and (b) of section 101 of the Immigration and*
7 *Nationality Act (8 U.S.C. 1101) shall apply to this*
8 *section.*

9 (2) *APPLICABILITY.—Nothing in this section*
10 *shall be construed to repeal or restrict the powers, du-*
11 *ties, functions, or authority of the Secretary of Home-*
12 *land Security in the administration and enforcement*
13 *of the Immigration and Nationality Act (8 U.S.C.*
14 *1101 et seq.) or any other Federal law relating to im-*
15 *migration, nationality, or naturalization.*

16 (d) *SUBSEQUENT REMOVAL PROCEEDINGS.—Nothing*
17 *in this section shall be construed to prohibit the Secretary*
18 *of Homeland Security from instituting removal proceedings*
19 *against an alien whose status was adjusted under subsection*
20 *(a) for—*

21 (1) *conduct committed after such adjustment of*
22 *status; or*

23 (2) *conduct or a condition that was not disclosed*
24 *to the Secretary prior to such adjustment of status.*

1 **SEC. 308. TEMPORARY PROTECTED STATUS.**

2 (a) *EXTRAORDINARY AND TEMPORARY CONDITIONS*
3 *CONSIDERED TO EXIST.*—

4 (1) *IN GENERAL.*—*For purposes of section*
5 *244(b)(1)(C) of the Immigration and Nationality Act*
6 *(8 U.S.C. 1254a(b)(1)(C)), extraordinary and tem-*
7 *porary conditions shall be considered to exist in*
8 *North Korea that prevent aliens who are natives or*
9 *citizens of North Korea from returning to North*
10 *Korea in safety.*

11 (2) *TERMINATION OF PROTECTED STATUS.*—*The*
12 *extraordinary and temporary conditions referred to*
13 *in paragraph (1) shall be considered to exist until the*
14 *Secretary of Homeland Security determines that—*

15 (A) *the human rights and trafficking*
16 *records of North Korea, according to the Country*
17 *Report on Human Rights Practices issued by the*
18 *United States Department of State, Bureau of*
19 *Democracy, Human Rights, and Labor, and the*
20 *country report on trafficking issued by the Traf-*
21 *ficking in Persons Office of the Department of*
22 *State, are satisfactory; and*

23 (B) *North Korea is no longer on the list of*
24 *nations designated as state sponsors of terrorism*
25 *by the United States Department of State.*

1 (b) *SENSE OF CONGRESS.*—*It is the sense of Congress*
2 *that the United States should use its diplomatic means to*
3 *promote the institution of measures similar to humani-*
4 *tarian parole or the form of temporary protected status*
5 *granted under subsection (a), in countries that neighbor*
6 *North Korea.*

7 **SEC. 309. RIGHT TO ACCEPT EMPLOYMENT.**

8 *Section 208(d)(2) of the Immigration and Nationality*
9 *Act (8 U.S.C. 1158(d)(2)) is amended—*

10 (1) *by striking “Attorney General” and inserting*
11 *“Secretary of Homeland Security”; and*

12 (2) *by adding at the end the following: “In the*
13 *case of an applicant who is a citizen or native of*
14 *North Korea, the Secretary of Homeland Security*
15 *shall issue regulations under which such applicant*
16 *shall be entitled to employment authorization, and*
17 *such applicant shall not be subject to the 180-day*
18 *limitation described in the previous sentence.”.*

19 **SEC. 310. ANNUAL REPORTS.**

20 (a) *IMMIGRATION INFORMATION.*—*Not later than 1*
21 *year after the date of the enactment of this Act, and every*
22 *12 months thereafter for each of the following 5 years, the*
23 *Secretary of State and the Secretary of Homeland Security*
24 *shall submit a joint report to the appropriate congressional*

1 *committees on the operation of this title during the previous*
2 *year, which shall include—*

3 *(1) the number of aliens who are natives or citi-*
4 *zens of North Korea and have been granted humani-*
5 *tarian parole under section 306, and the immigration*
6 *status of such aliens before being granted humani-*
7 *tarian parole;*

8 *(2) the number of aliens who are natives or citi-*
9 *zens of North Korea and have been granted an adjust-*
10 *ment of status under section 307, and the immigra-*
11 *tion status of such aliens before being granted adjust-*
12 *ment of status;*

13 *(3) the number of aliens who are natives or citi-*
14 *zens of North Korea who were granted political asy-*
15 *lum;*

16 *(4) the number of aliens who are natives or citi-*
17 *zens of North Korea who were granted temporary pro-*
18 *TECTED status under section 308; and*

19 *(5) the number of aliens who are natives or citi-*
20 *zens of North Korea who applied for refugee status*
21 *and the number who were granted refugee status.*

22 *(b) COUNTRIES OF PARTICULAR CONCERN.—The*
23 *President shall include in each annual report on proposed*
24 *refugee admission pursuant to section 207(d) of the Immi-*
25 *gration and Nationality Act (8 U.S.C. 1157(d)), informa-*

1 *tion about specific measures taken to facilitate access to the*
2 *United States refugee program for individuals who have*
3 *fled countries of particular concern, as defined by the Sec-*
4 *retary of Homeland Security, for violations of religious*
5 *freedom pursuant to section 402(b) of the International Re-*
6 *ligious Freedom Act of 1998 (22 U.S.C. 6442(b)). The re-*
7 *port shall include, for each country of particular concern,*
8 *a description of access of the nationals or former habitual*
9 *residents of that country to a refugee determination on the*
10 *basis of—*

11 *(1) referrals by external agencies to a refugee ad-*
12 *judication;*

13 *(2) groups deemed to be of special humanitarian*
14 *concern to the United States for purposes of refugee*
15 *resettlement; and*

16 *(3) family links to the United States.*

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108TH CONGRESS
2^D SESSION

H. R. 4011

[Report No. 108-478, Part I]

A BILL

To promote human rights and freedom in the Democratic People's Republic of Korea, and for other purposes.

JULY 16, 2004

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed