

114TH CONGRESS  
2D SESSION

# S. 2738

To amend the Lobbying Disclosure Act of 1995 to require the disclosure of political intelligence activities, to amend title 18, United States Code, to provide for restrictions on former officers, employees, and elected officials of the executive and legislative branches regarding political intelligence contacts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 17, 2016

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To amend the Lobbying Disclosure Act of 1995 to require the disclosure of political intelligence activities, to amend title 18, United States Code, to provide for restrictions on former officers, employees, and elected officials of the executive and legislative branches regarding political intelligence contacts, 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 “Political Intelligence  
5       Transparency Act of 2016”.

1 **SEC. 2. DISCLOSURE OF POLITICAL INTELLIGENCE ACTIVI-**  
 2 **TIES UNDER LOBBYING DISCLOSURE ACT.**

3 (a) DEFINITIONS.—Section 3 of the Lobbying Discolo-  
 4 sure Act of 1995 (2 U.S.C. 1602) is amended—

5 (1) in paragraph (2)—

6 (A) by inserting after “lobbying activities”  
 7 each place that term appears the following: “or  
 8 political intelligence activities”; and

9 (B) by inserting after “lobbyists” the fol-  
 10 lowing: “or political intelligence consultants”;

11 (2) in paragraph (10), by inserting “combined  
 12 political intelligence activities and” after “whose”;  
 13 and

14 (3) by adding at the end the following new  
 15 paragraphs:

16 “(17) POLITICAL INTELLIGENCE ACTIVITIES.—  
 17 The term ‘political intelligence activities’ means po-  
 18 litical intelligence contacts and efforts in support of  
 19 such contacts, including preparation and planning  
 20 activities, research, and other background work that  
 21 is intended, at the time it is performed, for use in  
 22 contacts, and coordination with such contacts and  
 23 efforts of others.

24 “(18) POLITICAL INTELLIGENCE CONTACT.—

25 “(A) DEFINITION.—The term ‘political in-  
 26 telligence contact’ means any oral or written

1 communication (including an electronic commu-  
2 nication) to or from a covered executive branch  
3 official or a covered legislative branch official,  
4 the information derived from which is for use in  
5 analyzing the markets for securities, commod-  
6 ities for future delivery, swaps, or security-  
7 based swaps, and which is made on behalf of a  
8 client with regard to—

9 “(i) the formulation, modification, or  
10 adoption of Federal legislation (including  
11 legislative proposals);

12 “(ii) the formulation, modification, or  
13 adoption of a Federal rule, regulation, Ex-  
14 ecutive order, or any other program, policy,  
15 or position of the United States Govern-  
16 ment;

17 “(iii) the administration or execution  
18 of a Federal program or policy (including  
19 the negotiation, award, or administration  
20 of a Federal contract, grant, loan, permit,  
21 or license); or

22 “(iv) the nomination or confirmation  
23 of a person for a position subject to con-  
24 firmation by the Senate.

1           “(B) EXCEPTION.—The term ‘political in-  
2           telligence contact’ does not include a commu-  
3           nication that is—

4                   “(i) made by a representative of a  
5                   media organization (as such term is de-  
6                   fined in this subsection) if the purpose of  
7                   the communication is gathering and dis-  
8                   seminating news and information to the  
9                   public;

10                   “(ii) made in a speech, article, publi-  
11                   cation or other material that is distributed  
12                   and made available to the public, or  
13                   through radio, television, cable television,  
14                   or other medium of mass communication;

15                   “(iii) made on behalf of a government  
16                   of a foreign country or a foreign political  
17                   party and disclosed under the Foreign  
18                   Agents Registration Act of 1938 (22  
19                   U.S.C. 611 et seq.);

20                   “(iv) a request for a meeting, a re-  
21                   quest for the status of an action, or any  
22                   other similar administrative request, if the  
23                   request does not include an attempt to in-  
24                   fluence a covered executive branch official  
25                   or a covered legislative branch official;

1 “(v) made in the course of participa-  
2 tion in an advisory committee subject to  
3 the Federal Advisory Committee Act;

4 “(vi) testimony given before a com-  
5 mittee, subcommittee, or task force of the  
6 Congress, or submitted for inclusion in the  
7 public record of a hearing conducted by  
8 such committee, subcommittee, or task  
9 force;

10 “(vii) information provided in writing  
11 in response to an oral or written request  
12 by a covered executive branch official or a  
13 covered legislative branch official for spe-  
14 cific information;

15 “(viii) required by subpoena, civil in-  
16 vestigative demand, or otherwise compelled  
17 by statute, regulation, or other action of  
18 the Congress or an agency, including any  
19 communication compelled by a Federal  
20 contract, grant, loan, permit, or license;

21 “(ix) made in response to a notice in  
22 the Federal Register, Commerce Business  
23 Daily, or other similar publication solie-  
24 iting communications from the public and  
25 directed to the agency official specifically

1 designated in the notice to receive such  
2 communications;

3 “(x) not possible to report without  
4 disclosing information, the unauthorized  
5 disclosure of which is prohibited by law;

6 “(xi) made to an official in an agency  
7 with regard to—

8 “(I) a judicial proceeding or a  
9 criminal or civil law enforcement in-  
10 quiry, investigation, or proceeding; or

11 “(II) a filing or proceeding that  
12 the Government is specifically re-  
13 quired by statute or regulation to  
14 maintain or conduct on a confidential  
15 basis, if that agency is charged with  
16 responsibility for such proceeding, in-  
17 quiry, investigation, or filing;

18 “(xii) made in compliance with writ-  
19 ten agency procedures regarding an adju-  
20 dication conducted by the agency under  
21 section 554 of title 5, United States Code,  
22 or substantially similar provisions;

23 “(xiii) a written comment filed in the  
24 course of a public proceeding or any other

1 communication that is made on the record  
2 in a public proceeding;

3 “(xiv) a petition for agency action  
4 made in writing and required to be a mat-  
5 ter of public record pursuant to established  
6 agency procedures;

7 “(xv) made on behalf of an individual  
8 with regard to that individual’s benefits,  
9 employment, or other personal matters in-  
10 volving only that individual, except that  
11 this clause does not apply to any commu-  
12 nication with—

13 “(I) a covered executive branch  
14 official; or

15 “(II) a covered legislative branch  
16 official (other than the individual’s  
17 elected Members of Congress or em-  
18 ployees who work under such Mem-  
19 bers’ direct supervision), with respect  
20 to the formulation, modification, or  
21 adoption of private legislation for the  
22 relief of that individual;

23 “(xvi) a disclosure by an individual  
24 that is protected under the amendments  
25 made by the Whistleblower Protection Act

1 of 1989, under the Inspector General Act  
2 of 1978, or under another provision of law;

3 “(xvii) made by—

4 “(I) a church, its integrated aux-  
5 iliary, or a convention or association  
6 of churches that is exempt from filing  
7 a Federal income tax return under  
8 paragraph 2(A)(i) of section 6033(a)  
9 of the Internal Revenue Code of 1986;  
10 or

11 “(II) a religious order that is ex-  
12 empt from filing a Federal income tax  
13 return under paragraph (2)(A)(iii) of  
14 such section 6033(a); and

15 “(xviii) between—

16 “(I) officials of a self-regulatory  
17 organization (as defined in section  
18 3(a)(26) of the Securities Exchange  
19 Act) that is registered with or estab-  
20 lished by the Securities and Exchange  
21 Commission as required by that Act  
22 or a similar organization that is des-  
23 ignated by or registered with the  
24 Commodities Future Trading Com-



1 mission as provided under the Com-  
2 modity Exchange Act; and

3 “(II) the Securities and Ex-  
4 change Commission or the Commod-  
5 ities Future Trading Commission, re-  
6 spectively;

7 relating to the regulatory responsibilities of  
8 such organization under that Act.

9 “(19) POLITICAL INTELLIGENCE FIRM.—The  
10 term ‘political intelligence firm’ means a person or  
11 entity that has one or more employees who are polit-  
12 ical intelligence consultants to a client other than  
13 that person or entity.

14 “(20) POLITICAL INTELLIGENCE CONSULT-  
15 ANT.—The term ‘political intelligence consultant’  
16 means any individual who is employed or retained by  
17 a client for financial or other compensation for serv-  
18 ices that include one or more political intelligence  
19 contacts, including an individual who provides bro-  
20 kerage and research services under section 28(e) of  
21 the Securities Exchange Act of 1934 (15 U.S.C.  
22 78bb(e)), other than an individual whose combined  
23 political intelligence activities and lobbying activities  
24 constitute less than 20 percent of the time engaged

1 in the services provided by such individual to that  
 2 client over a 3-month period.

3 “(21) SECURITY.—The term ‘security’ has the  
 4 meaning given such term in section 3(a)(10) of the  
 5 Securities Exchange Act of 1934 (15 U.S.C.  
 6 78c(a)(10)).

7 “(22) SECURITY-BASED SWAP.—The term ‘se-  
 8 curity-based swap’ has the meaning given such term  
 9 in section 3(a)(68) of the Securities Exchange Act  
 10 of 1934 (15 U.S.C. 78c(a)(68)).

11 “(23) COMMODITY.—The term ‘commodity’ has  
 12 the meaning given such term in section 1a(9) of the  
 13 Commodity Exchange Act (7 U.S.C. 1a(9)).

14 “(24) SWAP.—The term ‘swap’ has the mean-  
 15 ing given such term in section 1a(47) of the Com-  
 16 modity Exchange Act (7 U.S.C. 1a(47)).”.

17 (b) REGISTRATION REQUIREMENT.—Section 4 of the  
 18 Lobbying Disclosure Act of 1995 (2 U.S.C. 1603) is  
 19 amended—

20 (1) in subsection (a)—

21 (A) by amending paragraph (1) to read as  
 22 follows:

23 “(1) GENERAL RULE.—A lobbyist or a political  
 24 intelligence consultant (or, as provided under para-  
 25 graph (2), the organization employing such lobbyist

1 or consultant), shall register with the Secretary of  
2 the Senate and the Clerk of the House of Represent-  
3 atives—

4 “(A) no later than 45 days after—

5 “(i) the lobbyist first makes a lob-  
6 bying contact or is employed or retained to  
7 make a lobbying contact, whichever is ear-  
8 lier; or

9 “(ii) the political intelligence consult-  
10 ant first makes a political intelligence con-  
11 tact or is employed or retained to make a  
12 political intelligence contact, whichever is  
13 earlier; or

14 “(B) on the first business day after such  
15 45th day if the 45th day is not a business  
16 day.”;

17 (B) in paragraph (2), by inserting after  
18 “lobbyists” each place that term appears the  
19 following: “or political intelligence consultants”;  
20 and

21 (C) in paragraph (3)(A)—

22 (i) in clause (i)—

23 (I) by inserting after “lobbying  
24 activities” the following: “and political  
25 intelligence activities”; and

1 (II) by inserting after “lobbying  
 2 firm” the following: “or political intel-  
 3 ligence firm”;

4 (ii) in clause (ii)—

5 (I) by inserting after “lobbying  
 6 activities” the following: “and political  
 7 intelligence activities”; and

8 (II) by inserting after “lobbying  
 9 activities” the following: “or political  
 10 intelligence activities”;

11 (2) in subsection (b)—

12 (A) in paragraph (3), by inserting after  
 13 “lobbying activities” each place that term ap-  
 14 pears the following: “or political intelligence ac-  
 15 tivities”;

16 (B) in paragraph (4)—

17 (i) in the matter preceding subpara-  
 18 graph (A), by inserting after “lobbying ac-  
 19 tivities” the following: “or political intel-  
 20 ligence activities”; and

21 (ii) in subparagraph (C), by inserting  
 22 after “lobbying activity” the following: “or  
 23 political intelligence activity”;

24 (C) in paragraph (5), by inserting after  
 25 “lobbying activities” each place that term ap-

1           pears the following: “or political intelligence ac-  
2           tivities”; and

3                   (D) in the matter following paragraph (6),  
4           by inserting “or political intelligence activities”  
5           after “such lobbying activities”;  
6           (3) in subsection (c)—

7                   (A) in paragraph (1), by inserting after  
8           “lobbying contacts” the following: “or political  
9           intelligence contacts”; and

10                  (B) in paragraph (2)—

11                   (i) by inserting after “lobbying con-  
12           tact” the following: “or political intel-  
13           ligence contact”; and

14                   (ii) by inserting after “lobbying con-  
15           tacts” the following: “and political intel-  
16           ligence contacts”; and

17                  (C) by inserting after paragraph (2), the  
18           following new paragraph:

19                  “(3) RULE OF CONSTRUCTION.—Any threshold  
20           dollar amount or percentage described in subsection  
21           (b) relates to the sum of the income, contributions,  
22           or percent equitable ownership related to lobbying  
23           activities plus the income, contributions, or percent  
24           equitable ownership related to political intelligence  
25           activities.”; and

1           (4) in subsection (d), by inserting after “lob-  
 2       bying activities” each place that term appears the  
 3       following: “or political intelligence activities”.

4       (c) REPORTS BY REGISTERED POLITICAL INTEL-  
 5       LIGENCE CONSULTANTS.—Section 5 of the Lobbying Dis-  
 6       closure Act of 1995 (2 U.S.C. 1604) is amended—

7           (1) in subsection (a), by inserting after “lob-  
 8       bying activities” the following: “and political intel-  
 9       ligence activities”;

10          (2) in subsection (b)—

11           (A) in paragraph (2)—

12               (i) in the matter preceding subpara-  
 13               graph (A), by inserting after “lobbying ac-  
 14               tivities” the following: “or political intel-  
 15               ligence activities”;

16               (ii) in subparagraph (A)—

17                   (I) by inserting after “lobbyist”  
 18                   the following: “or political intelligence  
 19                   consultant”; and

20                   (II) by inserting after “lobbying  
 21                   activities” the following: “or political  
 22                   intelligence activities”;

23               (iii) in subparagraph (B), by inserting  
 24               after “lobbyists” the following: “and polit-  
 25               ical intelligence consultants”; and

1 (iv) in subparagraph (C), by inserting  
 2 after “lobbyists” the following: “or political  
 3 intelligence consultants”;

4 (B) in paragraph (3)—

5 (i) by inserting after “lobbying firm”  
 6 the following: “or political intelligence  
 7 firm”; and

8 (ii) by inserting after “lobbying activi-  
 9 ties” each place that term appears the fol-  
 10 lowing: “or political intelligence activities”;  
 11 and

12 (C) in paragraph (4), by inserting after  
 13 “lobbying activities” each place that term ap-  
 14 pears the following: “or political intelligence ac-  
 15 tivities”; and

16 (3) in subsection (d)(1), in the matter pre-  
 17 ceding subparagraph (A), by inserting “or a political  
 18 intelligence consultant” after “a lobbyist”.

19 (d) DISCLOSURE AND ENFORCEMENT.—Section 6(a)  
 20 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1605)  
 21 is amended—

22 (1) in paragraph (3)(A), by inserting after “lob-  
 23 bying firms” the following: “, political intelligence  
 24 consultants, political intelligence firms,”;

1           (2) in paragraph (7), by striking “or lobbying  
2       firm” and inserting “lobbying firm, political intel-  
3       ligence consultant, or political intelligence firm”; and

4           (3) in paragraph (8), by striking “or lobbying  
5       firm” and inserting “lobbying firm, political intel-  
6       ligence consultant, or political intelligence firm”.

7       (e) RULES OF CONSTRUCTION.—Section 8(b) of the  
8       Lobbying Disclosure Act of 1995 (2 U.S.C. 1607(b)) is  
9       amended by striking “or lobbying contacts” and inserting  
10      “lobbying contacts, political intelligence activities, or polit-  
11      ical intelligence contacts”.

12      (f) IDENTIFICATION OF CLIENTS AND COVERED OF-  
13      FICIALS.—Section 14 of the Lobbying Disclosure Act of  
14      1995 (2 U.S.C. 1609) is amended—

15           (1) in subsection (a)—

16               (A) in the heading, by inserting “OR PO-  
17               LITICAL INTELLIGENCE” after “LOBBYING”;

18               (B) by inserting “or political intelligence  
19               contact” after “lobbying contact” each place  
20               that term appears; and

21               (C) in paragraph (2), by inserting “or po-  
22               litical intelligence activity, as the case may be”  
23               after “lobbying activity”;

24           (2) in subsection (b)—



1 (A) in the heading, by inserting “OR PO-  
2 LITICAL INTELLIGENCE” after “LOBBYING”;

3 (B) by inserting “or political intelligence  
4 contact” after “lobbying contact” each place  
5 that term appears; and

6 (C) in paragraph (2), by inserting “or po-  
7 litical intelligence activity, as the case may be”  
8 after “lobbying activity”; and

9 (3) in subsection (c), by inserting “or political  
10 intelligence contact” after “lobbying contact”.

11 (g) ANNUAL AUDITS AND REPORTS BY COMP-  
12 TROLLER GENERAL.—Section 26 of the Lobbying Dislo-  
13 sure Act of 1995 (2 U.S.C. 1614) is amended—

14 (1) in subsection (a)—

15 (A) by inserting “political intelligence  
16 firms, political intelligence consultants,” after  
17 “lobbying firms”; and

18 (B) by striking “lobbying registrations”  
19 and inserting “registrations”;

20 (2) in subsection (b)(1)(A), by inserting “polit-  
21 ical intelligence firms, political intelligence consult-  
22 ants,” after “lobbying firms”; and

23 (3) in subsection (c), by inserting “or political  
24 intelligence consultant” after “a lobbyist”.

1 **SEC. 3. RESTRICTIONS ON FORMER OFFICERS, EMPLOY-**  
 2 **EES, AND ELECTED OFFICIALS OF THE EXEC-**  
 3 **UTIVE AND LEGISLATIVE BRANCHES RE-**  
 4 **GARDING POLITICAL INTELLIGENCE CON-**  
 5 **TACTS.**

6 Section 207 of title 18, United States Code, is  
 7 amended—

8 (1) in subsection (a)—

9 (A) in paragraph (1), by inserting after  
 10 “with the intent to influence,” the following:  
 11 “or with the intent to gain information for use  
 12 in analyzing securities or commodities markets,  
 13 or in informing investment decisions in securi-  
 14 ties or commodities markets,”;

15 (B) in paragraph (2), by inserting after  
 16 “with the intent to influence,” the following:  
 17 “or with the intent to gain information for use  
 18 in analyzing securities or commodities markets,  
 19 or in informing investment decisions in securi-  
 20 ties or commodities markets,”;

21 (2) in subsection (c)(1), by inserting after “with  
 22 the intent to influence,” the following: “or with the  
 23 intent to gain information for use in analyzing secu-  
 24 rities or commodities markets, or in informing in-  
 25 vestment decisions in securities or commodities mar-  
 26 kets,”;

1           (3) in subsection (d)(1), by inserting after  
 2           “with the intent to influence,” the following: “or  
 3           with the intent to gain information for use in ana-  
 4           lyzing securities or commodities markets, or in in-  
 5           forming investment decisions in securities or com-  
 6           modities markets,”;

7           (4) in subsection (e), by inserting after “with  
 8           the intent to influence,” each place it appears the  
 9           following: “or with the intent to gain information for  
 10          use in analyzing securities or commodities markets,  
 11          or in informing investment decisions in securities or  
 12          commodities markets,”;

13          (5) in subsection (i)(1), by inserting after “with  
 14          the intent to influence,” each place it appears the  
 15          following: “or with the intent to gain information for  
 16          use in analyzing securities or commodities markets,  
 17          or in informing investment decisions in securities or  
 18          commodities markets,”; and

19          (6) in subsection (j), by adding at the end the  
 20          following:

21               “(8) REPRESENTATIVE OF A MEDIA ORGANIZA-  
 22          TION.—The restrictions contained in this section re-  
 23          lating to a communication made with the intent to  
 24          gain information for use in analyzing securities or  
 25          commodities markets, or in informing investment de-

1       cisions in securities or commodities markets shall  
2       not apply to a communication made by a representa-  
3       tive of a media organization (as such term is defined  
4       in section 3 of the Lobbying Disclosure Act of 1995  
5       (2 U.S.C. 1602)), if the purpose of the communica-  
6       tion is gathering and disseminating news and infor-  
7       mation to the public.”.

8   **SEC. 4. EFFECTIVE DATE.**

9       The amendments made by this Act shall apply with  
10      respect to any political intelligence contact (as defined in  
11      section 3 of the Lobbying Disclosure Act of 1995 (2  
12      U.S.C. 1602), as added by section 2 of this Act) that is  
13      made on or after the 90th day after the date of the enact-  
14      ment of this Act.

○