

116TH CONGRESS
1ST SESSION

S. 232

To amend the Ethics in Government Act of 1978 to require individuals nominated or appointed to Senate-confirmed positions or to positions of a confidential or policymaking character to disclose certain types of contributions made or solicited by, or at the request of, the individuals.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2019

Mr. WHITEHOUSE (for himself, Mr. CARPER, Mr. UDALL, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Ethics in Government Act of 1978 to require individuals nominated or appointed to Senate-confirmed positions or to positions of a confidential or policymaking character to disclose certain types of contributions made or solicited by, or at the request of, the individuals.

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 “Conflicts from Political
5 Fundraising Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Public confidence in the Federal Govern-
2 ment is based on the expectation that officers and
3 employees will discharge their duties impartially, and
4 avoid either actual conflicts of interest or the ap-
5 pearance thereof.

6 (2) The risk of an actual conflict of interest, or
7 the appearance thereof, arises when a nominee or
8 appointee to a Senate-confirmed position or an indi-
9 vidual in a position of a confidential or policymaking
10 character has previously donated to, solicited for, or
11 received funds from a political action committee or
12 entity organized under section 501(c)(4) or section
13 501(c)(6) of the Internal Revenue Code of 1986.

14 (3) Since the 2010 decision by the Supreme
15 Court of the United States in *Citizens United v.*
16 Federal Election Commission, spending by corpora-
17 tions subject to Federal laws and regulations has in-
18 creased dramatically.

19 (4) While some corporate political spending is
20 done publicly, contributions to entities organized
21 under section 501(c)(4) of the Internal Revenue
22 Code of 1986 need not be disclosed, making this
23 spending effectively anonymous. The risk of an ac-
24 tual conflict of interest, or the appearance thereof,

1 arises whether political spending is public or anony-
 2 mous.

3 (5) Current financial disclosure requirements do
 4 not require filers to report funds they have donated
 5 to, solicited for, or received from political action
 6 committees or entities organized under section
 7 501(c)(4) or section 501(c)(6) of the Internal Rev-
 8 enue Code of 1986.

9 (6) Apparent or actual conflicts of interest are
 10 best ameliorated through public disclosure of this ac-
 11 tivity to the Office of Government Ethics so the ap-
 12 parent or actual conflicts can be addressed in ethics
 13 agreements negotiated between the filer and the
 14 agency in which the filer will serve.

15 **SEC. 3. DISCLOSURE OF CERTAIN TYPES OF CONTRIBU-**
 16 **TIONS.**

17 (a) DEFINITIONS.—Section 109 of the Ethics in Gov-
 18 ernment Act of 1978 (5 U.S.C. App.) is amended—

19 (1) by redesignating paragraphs (2) through
 20 (19) as paragraphs (5) through (22), respectively;
 21 and

22 (2) by inserting after paragraph (1) the fol-
 23 lowing:

1 “(2) ‘covered contribution’ means a payment,
2 advance, forbearance, rendering, or deposit of
3 money, or any thing of value—

4 “(A)(i) that—

5 “(I) is—

6 “(aa) made by or at the request
7 of a covered individual; or

8 “(bb) solicited in writing by or at
9 the request of a covered individual;
10 and

11 “(II) is made—

12 “(aa) to a political organization,
13 as defined in section 527 of the Inter-
14 nal Revenue Code of 1986; or

15 “(bb) to an organization—

16 “(AA) that is described in
17 paragraph (4) or (6) of section
18 501(c) of the Internal Revenue
19 Code of 1986 and exempt from
20 tax under section 501(a) of such
21 Code; and

22 “(BB) that promotes or op-
23 poses changes in Federal laws or
24 regulations that are (or would
25 be) administered by the agency in

1 which the covered individual has
2 been nominated for appointment
3 to a covered position or is serving
4 in a covered position; or

5 “(ii) that is—

6 “(I) solicited in writing by or at the
7 request of a covered individual; and

8 “(II) made—

9 “(aa) by an individual or entity
10 the activities of which are subject to
11 Federal laws or regulations that are
12 (or would be) administered by the
13 agency in which the covered individual
14 has been nominated for appointment
15 to a covered position or is serving in
16 a covered position; and

17 “(bb) to—

18 “(AA) a political organiza-
19 tion, as defined in section 527 of
20 the Internal Revenue Code of
21 1986; or

22 “(BB) an organization that
23 is described in paragraph (4) or
24 (6) of section 501(c) of the Inter-
25 nal Revenue Code of 1986 and

1 exempt from tax under section
 2 501(a) of such Code; and

3 “(B) that is made to an organization de-
 4 scribed in item (aa) or (bb) of clause (i)(II) or
 5 clause (ii)(II)(bb) of subparagraph (A) for
 6 which the total amount of such payments, ad-
 7 vances, forbearances, renderings, or deposits of
 8 money, or any thing of value, during the cal-
 9 endar year in which it is made is not less than
 10 the contribution limitation in effect under sec-
 11 tion 315(a)(1)(A) of the Federal Election Cam-
 12 paign Act of 1971 (52 U.S.C. 30116(a)(1)(A))
 13 for elections occurring during such calendar
 14 year;

15 “(3) ‘covered individual’ means an individual
 16 who has been nominated or appointed to a covered
 17 position; and

18 “(4) ‘covered position’—

19 “(A) means—

20 “(i) a position described under sec-
 21 tions 5312 through 5316 of title 5, United
 22 States Code;

23 “(ii) a position placed in level IV or V
 24 of the Executive Schedule under section
 25 5317 of title 5, United States Code;

“(iii) a position as a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5, United States Code; or

“(iv) a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations; and

“(B) does not include a position if the individual serving in the position has been excluded from the application of section 101(f)(5);”.

(b) DISCLOSURE REQUIREMENTS.—The Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 101—

(A) in subsection (a)—

(i) by inserting “(1)” before “Within”; and

(ii) by striking “unless” and inserting “and, if the individual is assuming a covered position, the information described in

1 section 102(j), except that, subject to para-
 2 graph (2), the individual shall not be re-
 3 quired to file a report if”; and

4 (iii) by adding at the end the fol-
 5 lowing:

6 “(2) If an individual has left a position described in
 7 subsection (f) that is not a covered position and, within
 8 30 days, assumes a position that is a covered position, the
 9 individual shall, within 30 days of assuming the covered
 10 position, file a report containing the information described
 11 in section 102(j)(2)(A).”;

12 (B) in subsection (b)(1), in the first sen-
 13 tence, by inserting “and the information re-
 14 quired by section 102(j)” after “described in
 15 section 102(b)”;

16 (C) in subsection (d), by inserting “and, if
 17 the individual is serving in a covered position,
 18 the information required by section
 19 102(j)(2)(A)” after “described in section
 20 102(a)”;

21 (D) in subsection (e), by inserting “and, if
 22 the individual was serving in a covered position,
 23 the information required by section
 24 102(j)(2)(A)” after “described in section
 25 102(a)”;

1 (2) in section 102—

2 (A) in subsection (g), by striking “Political
3 campaign funds” and inserting “Except as pro-
4 vided in subsection (j), political campaign
5 funds”; and

6 (B) by adding at the end the following:

7 “(j)(1) In this subsection—

8 “(A) the term ‘applicable period’ means—

9 “(i) with respect to a report filed pursuant
10 to subsection (a) or (b) of section 101, the year
11 of filing and the 4 calendar years preceding the
12 year of the filing; and

13 “(ii) with respect to a report filed pursuant
14 to subsection (d) or (e) of section 101, the pre-
15 ceding calendar year; and

16 “(B) the term ‘covered gift’ means a gift that—

17 “(i) is made to a covered individual, the
18 spouse of a covered individual, or the dependent
19 child of a covered individual;

20 “(ii) is made by an entity described in item
21 (aa) or (bb) of section 109(2)(A)(i)(II); and

22 “(iii) would have been required to be re-
23 ported under subsection (a)(2) if the covered in-
24 dividual had been required to file a report

1 under section 101(d) with respect to the cal-
2 endar year during which the gift was made.

3 “(2)(A) A report filed pursuant to subsection (a), (b),
4 (d), or (e) of section 101 by a covered individual shall in-
5 clude, for each covered contribution made by or at the re-
6 quest of, or that was solicited in writing by or at the re-
7 quest of, that covered individual during the applicable pe-
8 riod—

9 “(i) the date on which the covered contribution
10 was made;

11 “(ii) if applicable, the date or dates on which
12 the covered contribution was solicited;

13 “(iii) the value of the covered contribution;

14 “(iv) the name of the person making the cov-
15 ered contribution; and

16 “(v) the name of the person receiving the cov-
17 ered contribution.

18 “(B)(i) Subject to clause (ii), a covered contribution
19 made by or at the request of, or that was solicited in writ-
20 ing by or at the request of, a covered individual shall con-
21 stitute a conflict of interest, or an appearance thereof,
22 with respect to the official duties of the covered individual.

23 “(ii) The Director of the Office of Government Ethics
24 may exempt a covered contribution from the application
25 of clause (i) if the Director determines the circumstances

1 of the solicitation and making of the covered contribution
 2 do not present a risk of a conflict of interest and the ex-
 3 emption of the covered contribution would not affect ad-
 4 versely the integrity of the Government or the public's con-
 5 fidence in the integrity of the Government.

6 “(3) A report filed pursuant to subsection (a) or (b)
 7 of section 101 by a covered individual shall include the
 8 information described in subsection (a)(2) with respect to
 9 each covered gift received during the applicable period.”.

10 (c) PROVISION OF REPORTS AND ETHICS AGREE-
 11 MENTS TO CONGRESS.—Section 105 of the Ethics in Gov-
 12 ernment Act of 1978 (5 U.S.C. App.) is amended by add-
 13 ing at the end the following:

14 “(e) Not later than 30 days after receiving a written
 15 request from the Chairman or Ranking Member of a com-
 16 mittee or subcommittee of either House of Congress, the
 17 Director of the Office of Government Ethics shall provide
 18 to the Chairman and Ranking Member each report filed
 19 under this title by a covered individual and any ethics
 20 agreement entered into between the agency and the cov-
 21 ered individual.”.

22 (d) RULES ON ETHICS AGREEMENTS.—The Director
 23 of the Office of Government Ethics shall promptly issue
 24 rules regarding how an agency in the executive branch
 25 shall address information required to be disclosed under

1 the amendments made by this Act in drafting ethics agree-
 2 ments between the agency and individuals appointed to po-
 3 sitions in the agency.

4 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) The Ethics in Government Act of 1978 (5
 6 U.S.C. App.) is amended—

7 (A) in section 101(f)—

8 (i) in paragraph (9), by striking “sec-
 9 tion 109(12)” and inserting “section
 10 109(15)”;

11 (ii) in paragraph (10), by striking
 12 “section 109(13)” and inserting “section
 13 109(16)”;

14 (iii) in paragraph (11), by striking
 15 “section 109(10)” and inserting “section
 16 109(13)”;

17 (iv) in paragraph (12), by striking
 18 “section 109(8)” and inserting “section
 19 109(11)”;

20 (B) in section 103(l)—

21 (i) in paragraph (9), by striking “sec-
 22 tion 109(12)” and inserting “section
 23 109(15)”;

1 (ii) in paragraph (10), by striking
 2 “section 109(13)” and inserting “section
 3 109(16)”; and

4 (C) in section 105(b)(3)(A), by striking
 5 “section 109(8) or 109(10)” and inserting “sec-
 6 tion 109(11) or 109(13)”.

7 (2) Section 3(4)(D) of the Lobbying Disclosure
 8 Act of 1995 (2 U.S.C. 1602(4)(D)) is amended by
 9 striking “section 109(13)” and inserting “section
 10 109(16)”.

11 (3) Section 21A of the Securities Exchange Act
 12 of 1934 (15 U.S.C. 78u–1) is amended—

13 (A) in subsection (g)(2)(B)(ii), by striking
 14 “section 109(11) of the Ethics in Government
 15 Act of 1978 (5 U.S.C. App. 109(11)))” and in-
 16 serting “section 109 of the Ethics in Govern-
 17 ment Act of 1978 (5 U.S.C. App.)”; and

18 (B) in subsection (h)(2)—

19 (i) in subparagraph (B), by striking
 20 “section 109(8) of the Ethics in Govern-
 21 ment Act of 1978 (5 U.S.C. App. 109(8))”
 22 and inserting “section 109 of the Ethics in
 23 Government Act of 1978 (5 U.S.C. App.)”;
 24 and

1 (ii) in subparagraph (C), by striking
2 “section 109(10) of the Ethics in Govern-
3 ment Act of 1978 (5 U.S.C. App.
4 109(10))” and inserting “section 109 of
5 the Ethics in Government Act of 1978 (5
6 U.S.C. App.)”.

7 (4) Section 499(j)(2) of the Public Health Serv-
8 ice Act (42 U.S.C. 290b(j)(2)) is amended by strik-
9 ing “section 109(16) of the Ethics in Government
10 Act of 1978” and inserting “section 109 of the Eth-
11 ics in Government Act of 1978 (5 U.S.C. App.)”.

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