

117TH CONGRESS
2D SESSION

S. 3504

To amend the Ethics in Government Act of 1978 to prohibit transactions involving certain financial instruments by Members of Congress.

IN THE SENATE OF THE UNITED STATES

JANUARY 13 (legislative day, JANUARY 10), 2022

Mr. HAWLEY 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 prohibit transactions involving certain financial instruments by Members of Congress.

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 “Banning Insider Trad-
5 ing in Congress Act”.

6 **SEC. 2. BANNING INSIDER TRADING IN CONGRESS.**

7 (a) IN GENERAL.—The Ethics in Government Act of
8 1978 (5 U.S.C. App.) is amended by inserting after title
9 I the following:

1 **“TITLE II—BANNING INSIDER**
2 **TRADING IN CONGRESS**

3 **“SEC. 201. DEFINITIONS.**

4 “In this title:

5 “(1) COVERED FINANCIAL INSTRUMENT.—

6 “(A) IN GENERAL.—The term ‘covered fi-
7 nancial instrument’ means—

8 “(i) any investment in—

9 “(I) a security (as defined in sec-
10 tion 3(a) of Securities Exchange Act
11 of 1934 (15 U.S.C. 78c(a)));

12 “(II) a security future (as de-
13 fined in that section); or

14 “(III) a commodity (as defined in
15 section 1a of the Commodity Ex-
16 change Act (7 U.S.C. 1a)); and

17 “(ii) any economic interest com-
18 parable to an interest described in clause
19 (i) that is acquired through synthetic
20 means, such as the use of a derivative, in-
21 cluding an option, warrant, or other simi-
22 lar means.

23 “(B) EXCLUSIONS.—The term ‘covered fi-
24 nancial instrument’ does not include—

25 “(i) a diversified mutual fund;

1 “(ii) a diversified exchange-traded
2 fund;

3 “(iii) a United States Treasury bill,
4 note, or bond; or

5 “(iv) compensation from the primary
6 occupation of a spouse or dependent of a
7 Member of Congress.

8 “(2) MEMBER OF CONGRESS.—The term ‘Mem-
9 ber of Congress’ has the meaning given the term in
10 section 109.

11 “(3) QUALIFIED BLIND TRUST.—The term
12 ‘qualified blind trust’ has the meaning given the
13 term in section 102(f)(3).

14 “(4) SUPERVISING ETHICS COMMITTEE.—The
15 term ‘supervising ethics committee’ means, as appli-
16 cable—

17 “(A) the Select Committee on Ethics of
18 the Senate; and

19 “(B) the Committee on Ethics of the
20 House of Representatives.

21 **“SEC. 202. PROHIBITION ON CERTAIN TRANSACTIONS AND**
22 **HOLDINGS INVOLVING COVERED FINANCIAL**
23 **INSTRUMENTS.**

24 “(a) PROHIBITION.—Except as provided in sub-
25 section (b), a Member of Congress, or any spouse of a

1 Member of Congress, may not, during the term of service
2 of the Member of Congress, hold, purchase, or sell any
3 covered financial instrument.

4 “(b) EXCEPTIONS.—The prohibition under sub-
5 section (a) shall not apply to—

6 “(1) a sale by a Member of Congress, or a
7 spouse of a Member of Congress, that is completed
8 by the date that is—

9 “(A) for a Member of Congress serving on
10 the date of enactment of the Banning Insider
11 Trading in Congress Act, 180 days after that
12 date of enactment; and

13 “(B) for any Member of Congress who
14 commences service as a Member of Congress
15 after the date of enactment of the Banning In-
16 sider Trading in Congress Act, 180 days after
17 the first date of the initial term of service; or

18 “(2) a covered financial instrument held in a
19 qualified blind trust operated on behalf of, or for the
20 benefit of, the Member of Congress or spouse of the
21 Member of Congress.

22 “(c) PENALTIES.—

23 “(1) DISGORGEMENT.—A Member of Congress
24 shall disgorge to the Treasury of the United States
25 any profit from a transaction or holding involving a

1 covered financial instrument that is conducted in
2 violation of this section.

3 “(2) FINES.—A Member of Congress who holds
4 or conducts a transaction involving, or whose spouse
5 holds or conducts a transaction involving, a covered
6 financial instrument in violation of this section may
7 be subject to a civil fine assessed by the supervising
8 ethics committee under section 204.

9 **“SEC. 203. CERTIFICATION OF COMPLIANCE.**

10 “(a) IN GENERAL.—Not less frequently than annu-
11 ally, each Member of Congress shall submit to the applica-
12 ble supervising ethics committee a written certification
13 that the Member of Congress has achieved compliance
14 with the requirements of this title.

15 “(b) PUBLICATION.—The supervising ethics commit-
16 tees shall publish each certification submitted under sub-
17 section (a) on a publicly available website.

18 **“SEC. 204. AUTHORITY OF SUPERVISING ETHICS COMMIT-**

19 **TEES.**

20 “(a) IN GENERAL.—The supervising ethics commit-
21 tees may implement and enforce the requirements of this
22 title, including by—

23 “(1) issuing—

24 “(A) for Members of Congress—

1 “(i) rules governing that implementa-
2 tion; and

3 “(ii) 1 or more reasonable extensions
4 to achieve compliance with this title, if the
5 supervising ethics committee determines
6 that a Member of Congress is making a
7 good faith effort to divest any covered fi-
8 nancial instruments; and

9 “(B) guidance relating to covered financial
10 instruments;

11 “(2) publishing on the internet certifications
12 submitted by Members of Congress under section
13 203(a); and

14 “(3) assessing civil fines against any Member of
15 Congress who is in violation of this title, subject to
16 subsection (b).

17 “(b) REQUIREMENTS FOR CIVIL FINES.—

18 “(1) IN GENERAL.—Before imposing a fine pur-
19 suant to this section, a supervising ethics committee
20 shall provide to the applicable Member of Con-
21 gress—

22 “(A) a written notice describing each cov-
23 ered financial instrument transaction for which
24 a fine will be assessed; and

1 “(B) an opportunity, with respect to each
2 such covered financial instrument transaction—

3 “(i) for a hearing; and

4 “(ii) to achieve compliance with the
5 requirements of this title.

6 “(2) PUBLICATION.—Each supervising ethics
7 committee shall publish on a publicly available
8 website a description of—

9 “(A) each fine assessed by the supervising
10 ethics committee pursuant to this section;

11 “(B) the reasons why each such fine was
12 assessed; and

13 “(C) the result of each assessment, includ-
14 ing any hearing under paragraph (1)(B)(i) re-
15 lating to the assessment.

16 “(3) APPEAL.—A Member of Congress may ap-
17 peal the assessment of a fine under this section to
18 a vote on the floor of the Senate or the House of
19 Representatives, as applicable, as a privileged mo-
20 tion.

21 **“SEC. 205. AUDIT BY GOVERNMENT ACCOUNTABILITY OF-**
22 **FICE.**

23 “Not later than 2 years after the date of enactment
24 of the Banning Insider Trading in Congress Act, the
25 Comptroller General of the United States shall—

1 “(1) conduct an audit of the compliance by
2 Members of Congress with the requirements of this
3 title; and

4 “(2) submit to the supervising ethics commit-
5 tees a report describing the results of the audit con-
6 ducted under paragraph (1).”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 109 of the Ethics in Government
9 Act of 1978 (5 U.S.C. App.) is amended—

10 (A) in the matter preceding paragraph (1),
11 by striking “For the purposes of this title, the
12 term—” and inserting “In this title.”;

13 (B) in paragraph (1), by striking “means”
14 and all that follows through “Representatives;”
15 and inserting the following: “means, as applica-
16 ble—

17 “(A) the Select Committee on Ethics of
18 the Senate; and

19 “(B) the Committee on Ethics of the
20 House of Representatives.”;

21 (C) in each of paragraphs (2) through
22 (17), by striking the semicolon at the end of the
23 paragraph and inserting a period;

24 (D) in paragraph (18)—

1 (i) in subparagraph (B), by striking
2 “Standards of Official Conduct” and in-
3 serting “Ethics”; and

4 (ii) in subparagraph (D), by striking
5 “; and” at the end and inserting a period;
6 (E) in each of paragraphs (1) through
7 (19)—

8 (i) by inserting “The term” after the
9 paragraph designation; and

10 (ii) by inserting a paragraph heading,
11 the text of which is comprised of the term
12 defined in that paragraph; and

13 (F) by redesignating paragraphs (8) and
14 (9) as paragraphs (9) and (8), respectively, and
15 moving the paragraphs so as to appear in nu-
16 merical order.

17 (2) Section 101(f) of the Ethics in Government
18 Act of 1978 (5 U.S.C. App.) is amended—

19 (A) in paragraph (9), by striking “as de-
20 fined under section 109(12)”;

21 (B) in paragraph (10), by striking “as de-
22 fined under section 109(13)”;

23 (C) in paragraph (11), by striking “as de-
24 fined under section 109(10)”;

1 (D) in paragraph (12), by striking “as de-
2 fined under section 109(8)”.

3 (3) Section 103 of the Ethics in Government
4 Act of 1978 (5 U.S.C. App.) is amended—

5 (A) in subsection (j)(1), by striking
6 “Standards of Official Conduct” and inserting
7 “Ethics”; and

8 (B) in subsection (l)—

9 (i) in paragraph (9), by striking “, as
10 defined under section 109(12)”;

11 (ii) in paragraph (10), by striking “,
12 as defined under section 109(13)”.

13 (4) Section 105(b)(3)(A) of the Ethics in Gov-
14 ernment Act of 1978 (5 U.S.C. App.) is amended by
15 striking “described in section 109(8) or 109(10) of
16 this Act” and inserting “who is a judicial employee
17 or judicial officer”.

18 (5) Section 111(2) of the Ethics in Government
19 Act of 1978 (5 U.S.C. App.) is amended by striking
20 “Standards of Official Conduct” and inserting “Eth-
21 ics”.

22 (6) Section 402 of the Ethics in Government
23 Act of 1978 (5 U.S.C. App.) is amended—

24 (A) in subsection (b), by striking “title II
25 of” each place it appears; and

1 (B) in subsection (f)(2)(B)—

2 (i) by striking “Subject to clause (iv)
3 of this subparagraph, before” each place it
4 appears and inserting “Before”; and

5 (ii) by striking clause (iv).

6 (7) Section 503(1)(A) of the Ethics in Govern-
7 ment Act of 1978 (5 U.S.C. App.) is amended by
8 striking “Standards of Official Conduct” and insert-
9 ing “Ethics”.

10 (8) Section 3(4)(D) of the Lobbying Disclosure
11 Act of 1995 (2 U.S.C. 1602(4)(D)) is amended by
12 striking “legislative branch employee serving in a po-
13 sition described under section 109(13) of the Ethics
14 in Government Act of 1978 (5 U.S.C. App.)” and
15 inserting “officer or employee of the Congress (as
16 defined in section 109 of the Ethics in Government
17 Act of 1978 (5 U.S.C. App.))”.

18 (9) Section 21A of the Securities Exchange Act
19 of 1934 (15 U.S.C. 78u-1) is amended—

20 (A) in subsection (g)(2)(B)(ii), by striking
21 “section 109(11) of the Ethics in Government
22 Act of 1978 (5 U.S.C. App. 109(11))” and in-
23 serting “section 109 of the Ethics in Govern-
24 ment Act of 1978 (5 U.S.C. App.)”; and

25 (B) in subsection (h)(2)—

1 (i) in subparagraph (B), by striking
2 “section 109(8) of the Ethics in Govern-
3 ment Act of 1978 (5 U.S.C. App. 109(8))”
4 and inserting “section 109 of the Ethics in
5 Government Act of 1978 (5 U.S.C. App.)”;
6 and
7 (ii) in subparagraph (C), by striking
8 “under section 109(10) of the Ethics in
9 Government Act of 1978 (5 U.S.C. App.
10 109(10))” and inserting “in section 109 of
11 the Ethics in Government Act of 1978 (5
12 U.S.C. App.)”.

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