

S.9

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

IN THE SENATE

JUNE 22, 2023

Mr. Lionheart Hersey (For himself) introduced the following bill

A BILL

Mr. Lionheart Hersey (For himself) introduced the following bill To amend the Ethics in Government Act of 1978 to prohibit transactions involving certain financial instruments by Members of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Banning Insider Trading in Congress Act”.

SEC. 2. BANNING INSIDER TRADING IN CONGRESS.

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

“TITLE II—BANNING INSIDER TRADING IN CONGRESS

“SEC. 201. DEFINITIONS.

“In this title:

“(1) COVERED FINANCIAL INSTRUMENT.—

“(A) IN GENERAL.—The term ‘covered financial instrument’ means—

“(i) any investment in—

“(I) a security (as defined in section 3(a) of Securities Exchange Act of 1934 ([15 U.S.C. 78c\(a\)](#)));

“(II) a security future (as defined in that section); or

“(III) a commodity (as defined in section 1a of the Commodity Exchange Act ([7 U.S.C. 1a](#))); and

“(ii) any economic interest comparable to an interest described in clause (i) that is acquired through synthetic means, such as the use of a derivative, including an option, warrant, or other similar means.

“(B) EXCLUSIONS.—The term ‘covered financial instrument’ does not include—

“(i) a diversified mutual fund;

“(ii) a diversified exchange-traded fund;

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

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

“(2) MEMBER OF CONGRESS.—The term ‘Member of Congress’ has the meaning given in section 109.

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

“(4) SUPERVISING ETHICS COMMITTEE.—The term ‘supervising ethics committee’ means, as applicable—

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

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

“SEC. 202. PROHIBITION ON CERTAIN TRANSACTIONS AND HOLDINGS INVOLVING COVERED FINANCIAL INSTRUMENTS.

“(a) PROHIBITION.—Except as provided in subsection (b), a Member of Congress, or any spouse of a Member of Congress, may not, during the term of service of the Member of Congress, hold, purchase, or sell any covered financial instrument.

“(b) EXCEPTIONS.—The prohibition under subsection (a) shall not apply to—

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

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

“(B) for any Member of Congress who commences service as a Member of Congress after the date of enactment of the Banning Insider Trading in Congress Act, 180 days after the first date of the initial term of service; or

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

“(c) PENALTIES.—

“(1) DISGORGEMENT.—A Member of Congress shall disgorge to the Treasury of the United States any profit from a transaction or holding involving a covered financial instrument that is conducted in violation of this section.

“(2) INCOME TAX.—A loss from a transaction or holding involving a covered financial instrument that is conducted in violation of this section may not be deducted from the amount of income tax owed by the applicable Member of Congress or spouse of a Member of Congress.

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

“SEC. 203. CERTIFICATION OF COMPLIANCE.

“(a) IN GENERAL.—Not less frequently than annually, each Member of Congress shall submit to the applicable supervising ethics committee a written certification that the Member of Congress has achieved compliance with the requirements of this title.

“(b) PUBLICATION.—The supervising ethics committees shall publish each certification submitted under subsection (a) on a publicly available website.

“SEC. 204. AUTHORITY OF SUPERVISING ETHICS COMMITTEES.

“(a) IN GENERAL.—The supervising ethics committees may implement and enforce the requirements of this title, including by—

“(1) issuing—

“(A) for Members of Congress—

“(i) rules governing that implementation; and

“(ii) 1 or more reasonable extensions to achieve compliance with this title, if the supervising ethics committee determines that a Member of Congress is making a good faith effort to divest any covered financial instruments; and

“(B) guidance relating to covered financial instruments;

“(2) publishing on the Internet certifications submitted by Members of Congress under section 203(a); and

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

“(b) REQUIREMENTS FOR CIVIL FINES.—

“(1) IN GENERAL.—Before imposing a fine pursuant to this section, a supervising ethics committee shall provide to the applicable Member of Congress—

“(A) a written notice describing each covered financial instrument transaction for which a fine will be assessed; and

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

“(i) for a hearing; and

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

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

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

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

“(C) the result of each assessment, including any hearing under paragraph (1)(B)(i) relating to the assessment.

“(3) APPEAL.—A Member of Congress may appeal the assessment of a fine under this section to a vote on the floor of the Senate or the House of Representatives, as applicable, as a privileged motion.

“SEC. 205. AUDIT BY GOVERNMENT ACCOUNTABILITY OFFICE.

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

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

“(2) submit to the supervising ethics committees a report describing the results of the audit conducted under paragraph (1).”.

(b) CONFORMING AMENDMENTS.—

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

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

(B) in paragraph (1), by striking “means” and all that follows through “Representatives;” and inserting the following: “means, as applicable—

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

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

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

(D) in paragraph (18)—

(i) in subparagraph (B), by striking “Standards of Official Conduct” and inserting “Ethics”; and

(ii) in subparagraph (D), by striking “; and” at the end and inserting a period;

(E) in each of paragraphs (1) through (19)—

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

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

(F) by redesignating paragraphs (8) and (9) as paragraphs (9) and (8), respectively, and moving the paragraphs so as to appear in numerical order.

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

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

(B) in paragraph (10), by striking “as defined under section 109(13)”;

(C) in paragraph (11), by striking “as defined under section 109(10)”;

(D) in paragraph (12), by striking “as defined under section 109(8)”.

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

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

(B) in subsection (l)—

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

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

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

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

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

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

(B) in subsection (f)(2)(B)—

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

(ii) by striking clause (iv).

(7) Section 503(1)(A) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking “Standards of Official Conduct” and inserting “Ethics”.

(8) Section 3(4)(D) of the Lobbying Disclosure Act of 1995 ([2 U.S.C. 1602\(4\)\(D\)](#)) is amended by striking “legislative branch employee serving in a position described under [section 109\(13\)](#) of the Ethics in Government Act of 1978 (5 U.S.C. App.)” and inserting “officer or employee of the Congress (as defined in [section 109](#) of the Ethics in Government Act of 1978 (5 U.S.C. App.))”.

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

(A) in subsection (g)(2)(B)(ii), by striking “section 109(11) of the Ethics in Government Act of 1978 ([5 U.S.C. App. 109\(11\)](#))” and inserting “section 109 of the Ethics in Government Act of 1978 (5 U.S.C. App.)”; and

(B) in subsection (h)(2)—

(i) in subparagraph (B), by striking “section 109(8) of the Ethics in Government Act of 1978 ([5 U.S.C. App. 109\(8\)](#))” and inserting “section 109 of the Ethics in Government Act of 1978 (5 U.S.C. App.)”; and

(ii) in subparagraph (C), by striking “under [section 109\(10\)](#) of the Ethics in Government Act of 1978 ([5 U.S.C. App. 109\(10\)](#))” and inserting “in [section 109](#) of the Ethics in Government Act of 1978 (5 U.S.C. App.)”.