

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

S. 2038

To prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. REID

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Trading on Con-
5 gressional Knowledge Act of 2012” or the “STOCK Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) MEMBER OF CONGRESS.—The term “Mem-
9 ber of Congress” means a member of the Senate or
10 House of Representatives, a Delegate to the House

1 of Representatives, and the Resident Commissioner
2 from Puerto Rico.

3 (2) EMPLOYEE OF CONGRESS.—The term “em-
4 ployee of Congress” means—

5 (A) an employee of the Senate; or

6 (B) an employee of the House of Rep-
7 resentatives.

8 (3) EXECUTIVE BRANCH EMPLOYEE.—The
9 term “executive branch employee”—

10 (A) has the meaning given the term “em-
11 ployee” under section 2105 of title 5, United
12 States Code; and

13 (B) includes—

14 (i) the President;

15 (ii) the Vice President; and

16 (iii) an employee of the United States
17 Postal Service or the Postal Regulatory
18 Commission.

19 (4) JUDICIAL OFFICER.—The term “judicial of-
20 ficer” has the meaning given that term under sec-
21 tion 109(10) of the Ethics in Government Act of
22 1978.

1 **SEC. 3. PROHIBITION OF THE USE OF NONPUBLIC INFOR-**
2 **MATION FOR PRIVATE PROFIT.**

3 The Select Committee on Ethics of the Senate and
4 the Committee on Standards of Official Conduct of the
5 House of Representatives shall issue interpretive guidance
6 of the relevant rules of each chamber, including rules on
7 conflicts of interest and gifts, clarifying that a Member
8 of Congress and an employee of Congress may not use
9 nonpublic information derived from such person's position
10 as a Member of Congress or employee of Congress or
11 gained from the performance of such person's official re-
12 sponsibilities as a means for making a private profit.

13 **SEC. 4. PROHIBITION OF INSIDER TRADING.**

14 (a) **AFFIRMATION OF NON-EXEMPTION.**—Members of
15 Congress and employees of Congress are not exempt from
16 the insider trading prohibitions arising under the securi-
17 ties laws, including section 10(b) of the Securities Ex-
18 change Act of 1934 and Rule 10b–5 thereunder.

19 (b) **DUTY.**—

20 (1) **PURPOSE.**—The purpose of the amendment
21 made by this subsection is to affirm a duty arising
22 from a relationship of trust and confidence owed by
23 each Member of Congress and each employee of
24 Congress.

1 (2) AMENDMENT.—Section 21A of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C. 78u-1) is
3 amended by adding at the end the following:

4 “(g) DUTY OF MEMBERS AND EMPLOYEES OF CON-
5 GRESS.—

6 “(1) IN GENERAL.—For purposes of the insider
7 trading prohibitions arising under the securities
8 laws, including section 10(b) and Rule 10b-5 there-
9 under, each Member of Congress or employee of
10 Congress owes a duty arising from a relationship of
11 trust and confidence to the Congress, the United
12 States Government, and the citizens of the United
13 States with respect to material, nonpublic informa-
14 tion derived from such person’s position as a Mem-
15 ber of Congress or employee of Congress or gained
16 from the performance of such person’s official re-
17 sponsibilities.

18 “(2) DEFINITIONS.—In this subsection—

19 “(A) the term ‘Member of Congress’
20 means a member of the Senate or House of
21 Representatives, a Delegate to the House of
22 Representatives, and the Resident Commis-
23 sioner from Puerto Rico; and

24 “(B) the term ‘employee of Congress’
25 means—

1 “(i) an employee of the Senate; or

2 “(ii) an employee of the House of
3 Representatives.

4 “(3) RULE OF CONSTRUCTION.—Nothing in
5 this subsection shall be construed to impair or limit
6 the construction of the existing antifraud provisions
7 of the securities laws or the authority of the Com-
8 mission under those provisions.”.

9 **SEC. 5. CONFORMING CHANGES TO THE COMMODITY EX-**
10 **CHANGE ACT.**

11 Section 4c(a) of the Commodity Exchange Act (7
12 U.S.C. 6c(a)) is amended—

13 (1) in paragraph (3), in the matter preceding
14 subparagraph (A)—

15 (A) by inserting “or any Member of Con-
16 gress or employee of Congress (defined in this
17 subsection as those terms are defined in section
18 2 of the Stop Trading on Congressional Knowl-
19 edge Act of 2012)” after “Federal Govern-
20 ment,” the first place it appears;

21 (B) by inserting “Member,” after “position
22 of the”; and

23 (C) by inserting “or by Congress” before
24 “in a manner”; and

25 (2) in paragraph (4)—

1 (A) in subparagraph (A), in the matter
2 preceding clause (i)—

3 (i) by inserting “or any Member of
4 Congress or employee of Congress” after
5 “Federal Government,” the first place it
6 appears;

7 (ii) by inserting “Member,” after “po-
8 sition of the”; and

9 (iii) by inserting “or by Congress” be-
10 fore “in a manner”;

11 (B) in subparagraph (B), in the matter
12 preceding clause (i), by inserting “or any Mem-
13 ber of Congress or employee of Congress” after
14 “Federal Government,”; and

15 (C) in subparagraph (C)—

16 (i) in the matter preceding clause (i),
17 by inserting “or by Congress”—

18 (I) before “that may affect”; and

19 (II) before “in a manner”; and

20 (ii) in clause (iii), by inserting “to
21 Congress, or any Member of Congress or
22 employee of Congress” after “Federal Gov-
23 ernment”.

1 **SEC. 6. PROMPT REPORTING OF FINANCIAL TRANS-**
2 **ACTIONS.**

3 (a) REPORTING REQUIREMENT.—Section 101 of the
4 Ethics in Government Act of 1978 is amended by adding
5 at the end the following subsection:

6 “(j) Not later than 30 days after any transaction re-
7 quired to be reported under section 102(a)(5)(B), a Mem-
8 ber of Congress or officer or employee of Congress shall
9 file a report of the transaction.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to transactions occurring on or
12 after the date that is 90 days after the date of enactment
13 of this Act.

14 **SEC. 7. REPORT ON POLITICAL INTELLIGENCE ACTIVITIES.**

15 (a) REPORT.—

16 (1) IN GENERAL.—Not later than 12 months
17 after the date of enactment of this Act, the Comp-
18 troller General of the United States, in consultation
19 with the Congressional Research Service, shall sub-
20 mit to the Committee on Homeland Security and
21 Governmental Affairs of the Senate and the Com-
22 mittee on Oversight and Government Reform of the
23 House of Representatives a report on the role of po-
24 litical intelligence in the financial markets.

25 (2) CONTENTS.—The report required by this
26 section shall include a discussion of—

1 (A) what is known about the prevalence of
2 the sale of political intelligence and the extent
3 to which investors rely on such information;

4 (B) what is known about the effect that
5 the sale of political intelligence may have on the
6 financial markets;

7 (C) the extent to which information which
8 is being sold would be considered non-public in-
9 formation;

10 (D) the legal and ethical issues that may
11 be raised by the sale of political intelligence;

12 (E) any benefits from imposing disclosure
13 requirements on those who engage in political
14 intelligence activities; and

15 (F) any legal and practical issues that may
16 be raised by the imposition of disclosure re-
17 quirements on those who engage in political in-
18 telligence activities.

19 (b) DEFINITION.—For purposes of this section, the
20 term “political intelligence” shall mean information that
21 is—

22 (1) derived by a person from direct communica-
23 tions with executive branch and legislative branch of-
24 ficials; and

1 (2) provided in exchange for financial com-
2 pensation to a client who intends, and who is known
3 to intend, to use the information to inform invest-
4 ment decisions.

5 **SEC. 8. PUBLIC FILING AND DISCLOSURE OF FINANCIAL**
6 **DISCLOSURE FORMS OF MEMBERS OF CON-**
7 **GRESS AND CONGRESSIONAL STAFF.**

8 (a) PUBLIC, ON-LINE DISCLOSURE OF FINANCIAL
9 DISCLOSURE FORMS OF MEMBERS OF CONGRESS AND
10 CONGRESSIONAL STAFF.—

11 (1) IN GENERAL.—Not later than August 31,
12 2012, or 90 days after the date of enactment of this
13 Act, whichever is later, the Secretary of the Senate
14 and the Sergeant at Arms of the Senate, and the
15 Clerk of the House of Representatives, shall ensure
16 that financial disclosure forms filed by Members of
17 Congress, officers of the House and Senate, can-
18 didates for Congress, and employees of the Senate
19 and the House of Representatives in calendar year
20 2012 and in subsequent years pursuant to title I of
21 the Ethics in Government Act of 1978 are made
22 available to the public on the respective official
23 websites of the Senate and the House of Representa-
24 tives not later than 30 days after such forms are
25 filed.

1 (2) EXTENSIONS.—The existing protocol allow-
2 ing for extension requests for financial disclosures
3 shall be retained. Notices of extension for financial
4 disclosure shall be made available electronically
5 under this subsection along with its related disclo-
6 sure.

7 (3) REPORTING TRANSACTIONS.—In the case of
8 a transaction disclosure required by section 101(j) of
9 the Ethics in Government Act of 1978, as added by
10 this Act, such disclosures shall be filed not later
11 than 30 days after the transaction. Notices of exten-
12 sion for transaction disclosure shall be made avail-
13 able electronically under this subsection along with
14 its related disclosure.

15 (4) EXPIRATION.—The requirements of this
16 subsection shall expire upon implementation of the
17 public disclosure system established under subsection
18 (b).

19 (b) ELECTRONIC FILING AND ON-LINE PUBLIC
20 AVAILABILITY OF FINANCIAL DISCLOSURE FORMS OF
21 MEMBERS OF CONGRESS, OFFICERS OF THE HOUSE AND
22 SENATE, AND CONGRESSIONAL STAFF.—

23 (1) IN GENERAL.—Subject to paragraph (6)
24 and not later than 18 months after the date of en-
25 actment of this Act, the Secretary of the Senate and

1 the Sergeant at Arms of the Senate and the Clerk
2 of the House of Representatives shall develop sys-
3 tems to enable—

4 (A) electronic filing of reports received by
5 them pursuant to section 103(h)(1)(A) of title
6 I of the Ethics in Government Act of 1978; and

7 (B) public access to financial disclosure re-
8 ports filed by Members of Congress, Officers of
9 the House and Senate, candidates for Congress,
10 and employees of the Senate and House of Rep-
11 resentatives, as well as reports of a transaction
12 disclosure required by section 101(j) of the Eth-
13 ics in Government Act of 1978, as added by
14 this Act, notices of extensions, amendments and
15 blind trusts, pursuant to title I of the Ethics in
16 Government Act of 1978 through databases
17 that—

18 (i) are maintained on the official
19 websites of the House of Representatives
20 and the Senate; and

21 (ii) allow the public to search, sort
22 and download data contained in the re-
23 ports.

24 (2) LOGIN.—No login shall be required to
25 search or sort the data contained in the reports

1 made available by this subsection. A login protocol
2 with the name of the user shall be utilized by a per-
3 son downloading data contained in the reports. For
4 purposes of filings under this section, section
5 105(b)(2) of the Ethics in Government Act of 1978
6 does not apply.

7 (3) PUBLIC AVAILABILITY.—Pursuant to sec-
8 tion 105(b)(1) of title I of the Ethics in Government
9 Act of 1978, electronic availability on the official
10 websites of the Senate and the House of Representa-
11 tives under this subsection shall be deemed to have
12 met the public availability requirement.

13 (4) FILERS COVERED.—Individuals required
14 under the Ethics in Government Act of 1978 or the
15 Senate Rules to file financial disclosure reports with
16 the Secretary of the Senate or the Clerk of the
17 House shall file reports electronically using the sys-
18 tems developed by the Secretary of the Senate, the
19 Sergeant at Arms of the Senate, and the Clerk of
20 the House.

21 (5) EXTENSIONS.—The existing protocol allow-
22 ing for extension requests for financial disclosures
23 shall be retained for purposes of this subsection. No-
24 tices of extension for financial disclosure shall be

1 made available electronically under this subsection
2 along with its related disclosure.

3 (6) **ADDITIONAL TIME.**—The requirements of
4 this subsection may be implemented after the date
5 provided in paragraph (1) if the Secretary of the
6 Senate or the Clerk of the House identify in writing
7 to relevant congressional committees an additional
8 amount of time needed.

9 (c) **RECORDKEEPING.**—Section 105(d) of the Ethics
10 in Government Act of 1978 is amended to read as follows:

11 “(d)(1) Any report filed with or transmitted to an
12 agency or supervising ethics office or to the Clerk of the
13 House of Representatives or the Secretary of the Senate
14 pursuant to this title shall be retained by such agency or
15 office or by the Clerk or the Secretary of the Senate, as
16 the case may be.

17 “(2) Such report shall be made available to the pub-
18 lic—

19 “(A) in the case of a Member of Congress until
20 a date that is 6 years from the date the individual
21 ceases to be a Member of Congress; and

22 “(B) in the case of all other reports filed pursu-
23 ant to this title, for a period of six years after re-
24 ceipt of the report.

1 “(3) After the relevant time period identified under
2 paragraph (2), the report shall be destroyed unless needed
3 in an ongoing investigation, except that in the case of an
4 individual who filed the report pursuant to section 101(b)
5 and was not subsequently confirmed by the Senate, or who
6 filed the report pursuant to section 101(c) and was not
7 subsequently elected, such reports shall be destroyed 1
8 year after the individual either is no longer under consid-
9 eration by the Senate or is no longer a candidate for nomi-
10 nation or election to the Office of President, Vice Presi-
11 dent, or as a Member of Congress, unless needed in an
12 ongoing investigation or inquiry.”.

13 **SEC. 9. OTHER FEDERAL OFFICIALS.**

14 (a) PROHIBITION OF THE USE OF NONPUBLIC IN-
15 FORMATION FOR PRIVATE PROFIT.—

16 (1) EXECUTIVE BRANCH EMPLOYEES.—The Of-
17 fice of Government Ethics shall issue such interpre-
18 tive guidance of the relevant Federal ethics statutes
19 and regulations, including the Standards of Ethical
20 Conduct for executive branch employees, related to
21 use of nonpublic information, as necessary to clarify
22 that no executive branch employee may use non-pub-
23 lic information derived from such person’s position
24 as an executive branch employee or gained from the

1 performance of such person's official responsibilities
2 as a means for making a private profit.

3 (2) JUDICIAL OFFICERS.—The Judicial Con-
4 ference of the United States shall issue such inter-
5 pretive guidance of the relevant ethics rules applica-
6 ble to Federal judges, including the Code of Conduct
7 for United States Judges, as necessary to clarify
8 that no judicial officer may use non-public informa-
9 tion derived from such person's position as a judicial
10 officer or gained from the performance of such per-
11 son's official responsibilities as a means for making
12 a private profit.

13 (b) APPLICATION OF INSIDER TRADING LAWS.—

14 (1) AFFIRMATION OF NON-EXEMPTION.—Exec-
15 utive branch employees and judicial officers are not
16 exempt from the insider trading prohibitions arising
17 under the securities laws, including section 10(b) of
18 the Securities Exchange Act of 1934 and Rule 10b-
19 5 thereunder.

20 (2) DUTY.—

21 (A) PURPOSE.—The purpose of the
22 amendment made by this paragraph is to affirm
23 a duty arising from a relationship of trust and
24 confidence owed by each executive branch em-
25 ployee and judicial officer.

1 (B) AMENDMENT.—Section 21A of the Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78u-
3 1), as amended by this Act, is amended by add-
4 ing at the end the following:

5 “(h) DUTY OF OTHER FEDERAL OFFICIALS.—

6 “(1) IN GENERAL.—For purposes of the insider
7 trading prohibitions arising under the securities
8 laws, including section 10(b), and Rule 10b-5 there-
9 under, each executive branch employee and each ju-
10 dicial officer owes a duty arising from a relationship
11 of trust and confidence to the United States Govern-
12 ment and the citizens of the United States with re-
13 spect to material, nonpublic information derived
14 from such person’s position as an executive branch
15 employee or judicial officer or gained from the per-
16 formance of such person’s official responsibilities.

17 “(2) DEFINITIONS.—In this subsection—

18 “(A) the term ‘executive branch em-
19 ployee’—

20 “(i) has the meaning given the term
21 ‘employee’ under section 2105 of title 5,
22 United States Code;

23 “(ii) includes—

24 “(I) the President;

25 “(II) the Vice President; and

1 “(III) an employee of the United
2 States Postal Service or the Postal
3 Regulatory Commission; and

4 “(B) the term ‘judicial officer’ has the
5 meaning given that term under section 109(10)
6 of the Ethics in Government Act of 1978.

7 “(3) **RULE OF CONSTRUCTION.**—Nothing in
8 this subsection shall be construed to impair or limit
9 the construction of the existing antifraud provisions
10 of the securities laws or the authority of the Com-
11 mission under those provisions.”.

12 **SEC. 10. RULE OF CONSTRUCTION.**

13 Nothing in this Act, the amendments made by this
14 Act, or the interpretive guidance to be issued pursuant
15 to sections 3 and 9 of this Act, shall be construed to—

16 (1) impair or limit the construction of the anti-
17 fraud provisions of the securities laws or the Com-
18 modities Exchange Act or the authority of the Secu-
19 rities and Exchange Commission or the Commodity
20 Futures Trading Commission under those provi-
21 sions;

22 (2) be in derogation of the obligations, duties
23 and functions of a Member of Congress, an employee
24 of Congress, an executive branch employee or a judi-

1 cial officer, arising from such person's official posi-
2 tion; or

3 (3) be in derogation of existing laws, regula-
4 tions or ethical obligations governing Members of
5 Congress, employees of Congress, executive branch
6 employees or judicial officers.