

115TH CONGRESS
2D SESSION

S. 2482

To amend title 28, United States Code, to require the Attorney General to establish a section within the Department of Justice with responsibility for the enforcement of laws against suspected operatives or agents of foreign governments, to amend title 18, United States Code, to improve enforcement of the Foreign Agents Registration Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2018

Mrs. FEINSTEIN (for herself, Mr. CORNYN, Mrs. SHAHEEN, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To amend title 28, United States Code, to require the Attorney General to establish a section within the Department of Justice with responsibility for the enforcement of laws against suspected operatives or agents of foreign governments, to amend title 18, United States Code, to improve enforcement of the Foreign Agents Registration Act, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Foreign Agents Reg-
3 istration Amendments Act of 2018”.

4 **SEC. 2. FOREIGN OPERATIVES AND AGENTS REGISTRATION**
5 **INVESTIGATION AND ENFORCEMENT UNIT.**

6 Section 509A of title 28, United States Code, is
7 amended by adding at the end the following:

8 “(c) Not later than 180 days after the date of enact-
9 ment of this subsection, the Attorney General shall estab-
10 lish a unit within the counterespionage section of the Na-
11 tional Security Division of the Department of Justice with
12 responsibility for the enforcement of laws against sus-
13 pected operatives or unregistered agents of foreign govern-
14 ments.

15 “(d) The unit established under subsection (c) is au-
16 thorized to—

17 “(1) take appropriate legal action against indi-
18 viduals suspected of violating subsection (a) or (b)
19 of section 951 of title 18; and

20 “(2) coordinate any such legal action with the
21 United States Attorney for the relevant jurisdiction.

22 “(e) The Attorney General shall, as appropriate, con-
23 sult with the Director of National Intelligence, the Sec-
24 retary of Homeland Security, and the Secretary of State.”.

1 **SEC. 3. FOREIGN AGENTS REGISTRATION CRIMINAL EN-**
2 **FORCEMENT.**

3 Section 951 of title 18, United States Code, is
4 amended by striking subsections (a) through (e) and in-
5 serting the following:

6 “(a) OPERATIVES OF FOREIGN GOVERNMENTS.—

7 “(1) IN GENERAL.—Whoever, other than a dip-
8 lomatic or consular officer or attaché, acts in the
9 United States as an operative of a foreign govern-
10 ment without prior notification to the Attorney Gen-
11 eral if required in paragraph (2), shall be fined
12 under this title or imprisoned not more than 10
13 years, or both.

14 “(2) REGULATIONS.—The Attorney General
15 shall promulgate rules and regulations establishing
16 requirements for notification.

17 “(3) TRANSMISSION.—The Attorney General
18 shall, upon receipt, promptly transmit 1 copy of each
19 notification statement filed under this section to the
20 Secretary of State for such comment and use as the
21 Secretary of State may determine to be appropriate
22 from the point of view of the foreign relations of the
23 United States. Failure of the Attorney General to do
24 so shall not be a bar to prosecution under this sec-
25 tion.

1 “(4) DEFINITIONS.—For purposes of this sec-
2 tion, the term ‘operative of a foreign government’
3 means an individual who agrees to operate within
4 the United States subject to the direction or control
5 of a foreign government or official, except that such
6 term does not include—

7 “(A) a duly accredited diplomatic or con-
8 sular officer of a foreign government, who is so
9 recognized by the Department of State;

10 “(B) any officially and publicly acknowl-
11 edged and sponsored official or representative
12 of a foreign government;

13 “(C) any officially and publicly acknowl-
14 edged and sponsored member of the staff of, or
15 employee of, an officer, official, or representa-
16 tive described in paragraph (A) or (B), who is
17 not a United States citizen; or

18 “(D) any person engaged in a legal com-
19 mercial transaction.

20 “(5) RULE OF CONSTRUCTION.—Notwith-
21 standing paragraph (4)(D), any person engaged in a
22 legal commercial transaction shall be considered to
23 be an agent of a foreign government for purposes of
24 this section if—

1 “(A) such person agrees to operate within
2 the United States subject to the direction or
3 control of a foreign government or official; and

4 “(B) such person—

5 “(i) is an agent of Cuba or any other
6 country that the President determines (and
7 so reports to the Congress) poses a threat
8 to the national security interest of the
9 United States for purposes of this section,
10 unless the Attorney General, after con-
11 sultation with the Secretary of State, de-
12 termines and so reports to the Congress
13 that the national security or foreign policy
14 interests of the United States require that
15 the provisions of this section do not apply
16 in specific circumstances to agents of such
17 country; or

18 “(ii) has been convicted of, or has en-
19 tered a plea of nolo contendere with re-
20 spect to, any offense under section 792
21 through 799, 831, or 2381 of this title or
22 under section 11 of the Export Adminis-
23 tration Act of 1979, except that the provi-
24 sions of this subsection shall not apply to
25 a person described in this clause for a pe-

1 riod of more than 5 years beginning on the
 2 date of the conviction or the date of entry
 3 of the plea of nolo contendere, as the case
 4 may be.

5 “(b) FOREIGN AGENTS REGISTRATION CRIMINAL
 6 ENFORCEMENT.—

7 “(1) VIOLATIONS; FALSE STATEMENTS AND
 8 WILLFUL OMISSIONS.—Any person who—

9 “(A) willfully violates any provision of the
 10 Foreign Agents Registration Act of 1938 (22
 11 U.S.C. 611 et seq.) or any regulation there-
 12 under; or

13 “(B) in any registration statement or sup-
 14 plement thereto or in any other document filed
 15 with or furnished to the Attorney General
 16 under the provisions of the Foreign Agents
 17 Registration Act of 1938 (22 U.S.C. 611 et
 18 seq.) willfully makes a false statement of a ma-
 19 terial fact or willfully omits any material fact
 20 required to be stated therein or willfully omits
 21 a material fact or a copy of a material docu-
 22 ment necessary to make the statements therein
 23 and the copies of documents furnished there-
 24 with not misleading,

shall, upon conviction thereof, be punished by a fine of not more than \$200,000 or by imprisonment for not more than 5 years, or both, except that in the case of a violation of subsection (b), (e), or (f) of section 4 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 614) or of paragraph (4) or (5) of this section the punishment shall be a fine of not more than \$15,000 or imprisonment for not more than 6 months, or both.

“(2) CONGRESSIONAL NOTIFICATION.—It shall be unlawful for any agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) to fail to disclose before or during any meeting with a Member of Congress or staff of a Member of Congress that the agent has registered under that Act.”.

SEC. 4. FOREIGN AGENTS REGISTRATION CIVIL ENFORCEMENT.

Section 951 of title 18, United States Code, as amended by section 3, is amended by adding at the end the following:

“(c) FOREIGN AGENTS REGISTRATION CIVIL ENFORCEMENT.—

“(1) CIVIL INVESTIGATIVE DEMANDS.—

1 “(A) ISSUANCE AND SERVICE.—Whenever
2 the Attorney General, or a designee of the At-
3 torney General, has reason to believe that any
4 person may be in possession, custody, or control
5 of any documentary material or information rel-
6 evant to an investigation under this section, the
7 Attorney General, or a designee of the Attorney
8 General, may issue in writing and cause to be
9 served upon such person, a civil investigative
10 demand requiring such person—

11 “(i) to produce such documentary ma-
12 terial for inspection and copying;

13 “(ii) to answer in writing written in-
14 terrogatories with respect to such docu-
15 mentary material or information; or

16 “(iii) to give oral testimony con-
17 cerning such documentary material or in-
18 formation.

19 “(B) REQUIREMENTS.—Each civil inves-
20 tigative demand issued under subparagraph (A)
21 shall state the nature of the conduct consti-
22 tuting the alleged violation of a foreign agents
23 law which is under investigation, and the appli-
24 cable provision of law alleged to be violated.

1 “(C) PRODUCTION OF DOCUMENTS.—Each
2 civil investigative demand issued under sub-
3 paragraph (A) for the production of documen-
4 tary material shall—

5 “(i) describe each class of documen-
6 tary material to be produced with such
7 definiteness and certainty as to permit
8 such material to be fairly identified; and

9 “(ii) prescribe a return date for each
10 such class which will provide a reasonable
11 period of time within which the material so
12 demanded may be assembled and made
13 available for inspection and copying.

14 “(D) DEMAND FOR WRITTEN ANSWERS.—
15 Each civil investigative demand issued under
16 subparagraph (A) for answers to written inter-
17 rogatories shall—

18 “(i) set forth with specificity the writ-
19 ten interrogatories to be answered; and

20 “(ii) prescribe dates at which time an-
21 swers to written interrogatories shall be
22 submitted.

23 “(E) ORAL TESTIMONY.—Each civil inves-
24 tigative demand issued under subparagraph (A)
25 for the giving of oral testimony shall—

1 “(i) prescribe a date, time, and place
2 at which oral testimony shall be com-
3 menced;

4 “(ii) specify that such attendance and
5 testimony are necessary to the conduct of
6 the investigation;

7 “(iii) notify the person receiving the
8 demand of the right to be accompanied by
9 an attorney and any other representative;
10 and

11 “(iv) describe the general purpose for
12 which the demand is being issued and the
13 general nature of the testimony, including
14 the primary areas of inquiry, which will be
15 taken pursuant to the demand.

16 “(2) CIVIL PENALTIES.—

17 “(A) REGISTRATION STATEMENTS.—Who-
18 ever fails to file timely or complete registration
19 statement as provided under section 2(b) of the
20 Foreign Agents Registration Act of 1938 (22
21 U.S.C. 612(a)) shall be subject to a civil fine of
22 not more than \$10,000 per violation.

23 “(B) SUPPLEMENTS.—Whoever fails to file
24 timely or complete supplements as provided
25 under section 2(b) of the Foreign Agents Reg-

1 istration Act of 1938 (22 U.S.C. 612(b)) shall
2 be subject to a civil fine of not more than
3 \$1,000 per violation.

4 “(C) OTHER VIOLATIONS.—Whoever know-
5 ingly fails to—

6 “(i) remedy a defective filing within
7 60 days after notice of such defect by the
8 Attorney General; or

9 “(ii) comply with any other provision
10 of this chapter;

11 shall upon proof of such knowing violation by a
12 preponderance of the evidence, be subject to a
13 civil fine of not more than \$200,000, depending
14 on the extent and gravity of the violation.

15 “(D) NO FINES PAID BY FOREIGN PRIN-
16 CIPALS.—Whenever a fine is paid under para-
17 graph (1), such fine may not be paid, directly
18 or indirectly, by a foreign principal (as defined
19 in section 1 of the Foreign Agents Registration
20 Act of 1938 (22 U.S.C. 611)).

21 “(E) USE OF FINES.—All fines collected
22 under this subsection shall be used to defray
23 the cost of the Foreign Operatives and Agents
24 Enforcement Unit established under section
25 509A(c) of title 28.”.

1 **SEC. 5. REMOVING THE LOBBYING DISCLOSURE ACT EX-**
 2 **EMPTION.**

3 (a) IN GENERAL.—Section 3 of the Foreign Agents
 4 Registration Act of 1938 (22 U.S.C. 613) is amended by
 5 striking subsection (h).

6 (b) LOBBYING DISCLOSURE ACT.—

7 (1) IN GENERAL.—Section 4(a)(3) of the Lob-
 8 bying Disclosure Act of 1995 (2 U.S.C. 1603(a)(3))
 9 is amended by adding at the end the following:

10 “(C) FOREIGN AGENTS.—Any person re-
 11 quired to register as an agent of a foreign prin-
 12 cipal in accordance with the Foreign Agents
 13 Registration Act of 1938 (22 U.S.C. 611 et
 14 seq.) is not required to register under this sub-
 15 section.”.

16 (2) EFFECTIVE DATE.—The amendments made
 17 by paragraph (1) shall take effect 180 days after the
 18 date of enactment of this Act.

19 **SEC. 6. ENHANCING PUBLIC ACCESS TO DATABASE OF FOR-**
 20 **EIGN AGENTS.**

21 Not later than 180 days after the date of enactment
 22 of this Act, the Attorney General shall promulgate regula-
 23 tions that modernize the input and output data for dislo-
 24 sures under the Foreign Agents Registration Act of 1938
 25 (22 U.S.C. 611 et seq.), including regulations that provide
 26 that—

1 (1) not later than 2 years after the effective
2 date of the regulations, require all users to file the
3 disclosures through an online database, except under
4 limited circumstances established by the Attorney
5 General;

6 (2) the online submissions should use online
7 data entry software, including spreadsheets, that re-
8 quire all users to submit data in structured formats,
9 including comma separated values and automatically
10 validated data;

11 (3) the publishing of the disclosures by the Fed-
12 eral Government to the public should be in data that
13 is in a nonproprietary, machine-readable format;

14 (4) if the data is published in bulk, the data
15 should use file formats designed for bulk, structured
16 data like comma separated values; and

17 (5) client files should include a value that dem-
18 onstrates if a file has been terminated so the user
19 is aware when the client ends a relationship or just
20 stopped reporting.

21 **SEC. 7. SENSE OF CONGRESS.**

22 It is the sense of Congress that—

23 (1) meaningful enforcement of the Foreign
24 Agents Registration Act of 1938 (22 U.S.C. 611 et
25 seq.) is vital to the national security of the United

1 States and the integrity of our democratic process;
2 and
3 (2) the enforcement of that Act by the Depart-
4 ment of Justice must include civil and criminal pen-
5 alties, in addition to ongoing efforts to promote vol-
6 untary compliance.

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