

119TH CONGRESS
2D SESSION

S. _____

To prohibit the purchase or sale of securities while aware of nonpublic information contained in certain social media accounts controlled by Government officials, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WARNER introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit the purchase or sale of securities while aware of nonpublic information contained in certain social media accounts controlled by Government officials, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Preferential Re-
5 lease Of Federal Information for Transactions Act” or the
6 “NO PROFIT Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COMMODITY; CONTRACT OF SALE; FUTURE
2 DELIVERY; OPTION; SWAP.—The terms “com-
3 modity”, “contract of sale”, “future delivery”, “op-
4 tion”, and “swap” have the meanings given those
5 terms in section 1a of the Commodity Exchange Act
6 (7 U.S.C. 1a).

7 (2) COMMUNICATION.—The term “communica-
8 tion” means any post, statement, message, image,
9 video, audio recording, or other content generated,
10 published, or distributed through a social media
11 platform.

12 (3) COVERED FAMILY MEMBER.—The term
13 “covered family member” means the spouse, depend-
14 ent child, or other immediate family member of a
15 covered government official.

16 (4) COVERED GOVERNMENT OFFICIAL.—The
17 term “covered government official”—

18 (A) means—

- 19 (i) the President;
20 (ii) the Vice President;
21 (iii) a Member of Congress;
22 (iv) an employee of Congress;
23 (v) an executive branch employee;
24 (vi) a judicial officer; or
25 (vii) a judicial employee; and

1 (B) includes an individual described in any
2 clause of subparagraph (A) during the 180-day
3 period beginning on the date on which the indi-
4 vidual separates from the position described in
5 the applicable clause.

6 (5) COVERED SOCIAL MEDIA ACCOUNT.—The
7 term “covered social media account” means an ac-
8 count or profile on a social media platform that is—

9 (A) owned, operated, maintained, directed,
10 or controlled by—

11 (i) a covered government official;

12 (ii) a covered family member;

13 (iii) another person acting at the di-
14 rection of, or on behalf of, a covered gov-
15 ernment official or a covered family mem-
16 ber; or

17 (iv) a Federal agency, executive de-
18 partment, military department, or other in-
19 strumentality of the Federal Government;
20 or

21 (B) used by or on behalf of a covered gov-
22 ernment official, or a covered family member, to
23 communicate with the public.

24 (6) EMPLOYEE OF CONGRESS.—The term “em-
25 ployee of Congress” means—

1 (A) any individual, other than a Member of
2 Congress, the compensation of whom is dis-
3 bursed by the Secretary of the Senate or the
4 Chief Administrative Officer of the House of
5 Representatives; and

6 (B) any other officer or employee of the
7 legislative branch, as defined in section 13101
8 of title 5, United States Code.

9 (7) EXECUTIVE BRANCH EMPLOYEE.—The
10 term “executive branch employee”—

11 (A) means an employee, as defined in sec-
12 tion 2105 of title 5, United States Code, in the
13 executive branch of the Federal Government;
14 and

15 (B) includes—

16 (i) the President;

17 (ii) the Vice President;

18 (iii) an individual serving in a position
19 in the executive branch of the Federal Gov-
20 ernment for which appointment is made by
21 the President, without regard to whether
22 the advice and consent of the Senate is re-
23 quired with respect to that appointment,
24 including an individual serving in a posi-
25 tion—

1 (I) at level I, II, III, IV, or V of
2 the Executive Schedule, as described
3 in section 5312, 5313, 5314, 5315, or
4 5316 of title 5, United States Code,
5 respectively;

6 (II) described in section
7 213.3102(c) of title 5, Code of Fed-
8 eral Regulations, or any successor
9 regulation;

10 (III) described in section
11 213.3102(z) of title 5, Code of Fed-
12 eral Regulations, or any successor
13 regulation;

14 (IV) under schedule A under sub-
15 part C of part 213 of title 5, Code of
16 Federal Regulations, or any successor
17 regulations;

18 (iv) an employee of the United States
19 Postal Service or of the Postal Regulatory
20 Commission;

21 (v) a member of the uniformed serv-
22 ices, as defined in section 2101 of title 5,
23 United States Code, without regard to
24 whether that individual is on active duty;

1 (vi) an individual serving in a Senior
2 Executive Service position, as defined in
3 section 3132(a) of title 5, United States
4 Code;

5 (vii) an individual serving in a posi-
6 tion in the executive branch of the Federal
7 Government in a political capacity under
8 agency-specific authority; and

9 (viii) an individual serving in any po-
10 sition described in this paragraph under a
11 provisional political appointment.

12 (8) GENERALLY AVAILABLE.—The term “gen-
13 erally available,” with respect to a communication
14 issued through a covered social media account,
15 means that the communication is disseminated
16 through a method (or combination of methods) that
17 is available to ordinary social media platform users
18 through the standard, no-cost interface, without re-
19 gard to whether the communication is also accessible
20 through any other means, interface, or arrangement.

21 (9) JUDICIAL EMPLOYEE; JUDICIAL OFFICER.—
22 The terms “judicial employee” and “judicial officer”
23 have the meanings given those terms in section
24 13101 of title 5, United States Code.

1 (10) MATERIAL INFORMATION.—The term
2 “material information” means information with re-
3 spect to which there is a substantial likelihood that
4 a reasonable investor would consider the information
5 important in making an investment or trading deci-
6 sion.

7 (11) MEMBER OF CONGRESS.—The term
8 “Member of Congress” means a Member of the Sen-
9 ate or House of Representatives, a Delegate to the
10 House of Representatives, or the Resident Commis-
11 sioner from Puerto Rico.

12 (12) PRIORITIZED ACCESS.—The term
13 “prioritized access” means any service, arrangement,
14 method, or functionality through which a social
15 media platform, directly or indirectly, allows a per-
16 son or class of persons to receive, access, view, proc-
17 ess, or otherwise become aware of a communication
18 issued through a covered social media account—

19 (A) before the communication is generally
20 available; or

21 (B) on terms that differ materially in tim-
22 ing, latency, method of delivery, format,
23 functionality, or technical accessibility from the
24 terms available to other users of the social
25 media platform, unless those terms are for ac-

1 cessibility accommodations offered on a non-dis-
2 criminatory basis.

3 (13) PRIORITIZED COVERED INFORMATION.—

4 The term “prioritized covered information” means
5 material information contained in a communication
6 issued through a covered social media account
7 that—

8 (A) is obtained by a person through
9 prioritized access; and

10 (B) at the time the person obtains the in-
11 formation, is not generally available.

12 (14) SOCIAL MEDIA PLATFORM.—The term “so-
13 cial media platform” has the meaning given the
14 term in section 124(a) of the Trafficking Victims
15 Prevention and Protection Reauthorization Act of
16 2022 (42 U.S.C. 1862w(a)).

17 (15) SPECULATIVE INFORMATION MARKET.—

18 The term “speculative information market” means a
19 market, platform, facility, or system through which
20 a person may purchase, sell, or enter into a contract,
21 the value of, or payment with respect to which, is
22 based, in whole or in part, on the occurrence or non-
23 occurrence of an event or the outcome of a future
24 contingency.

1 **SEC. 3. PROHIBITION ON TRADING WHILE AWARE OF**
2 **PRIORITIZED COVERED INFORMATION.**

3 (a) PROHIBITION.—It shall be unlawful for any per-
4 son, directly or indirectly, while aware of prioritized cov-
5 ered information and before that information is generally
6 available, to—

7 (1) purchase, sell, or otherwise enter into a
8 transaction involving—

9 (A) a security or security-based swap;

10 (B) a commodity, contract of sale of a
11 commodity for future delivery, commodity op-
12 tion, or swap; or

13 (C) a contract offered through a specula-
14 tive information market;

15 (2) cause or direct another person to enter into
16 a transaction described in paragraph (1); or

17 (3) communicate prioritized covered information
18 to another person if the person communicating the
19 prioritized covered information knows, or reasonably
20 should know, that the recipient of the prioritized
21 covered information is likely to enter into a trans-
22 action described in paragraph (1) while aware of
23 that prioritized covered information and before the
24 prioritized covered information is generally available.

25 (b) KNOWLEDGE OF PRIORITIZED ACCESS.—A per-
26 son shall not be liable under subsection (a) unless the per-

1 son knew, or reasonably should have known, that the ap-
2 plicable prioritized covered information was obtained
3 through prioritized access.

4 (c) BREACH OF DUTY NOT REQUIRED.—A violation
5 of subsection (a) shall not require proof that the applicable
6 prioritized covered information was obtained or commu-
7 nicated through a breach of a fiduciary duty, a relation-
8 ship of trust or confidence, or any other duty of trust or
9 confidence.

10 (d) SECURITIES AND SECURITY-BASED SWAPS.—A
11 violation of this section involving a transaction involving
12 a security or security-based swap shall be treated as a vio-
13 lation of section 21A of the Securities Exchange Act of
14 1934 (15 U.S.C. 78u–1), and the Securities and Exchange
15 Commission may enforce that violation in the same man-
16 ner, by the same means, and with the same jurisdiction,
17 powers, and remedies available to the Commission under
18 such section 21A, without regard to whether that trans-
19 action would otherwise (but for the operation of this sub-
20 section) constitute a violation of such section 21A.

21 (e) COMMODITIES, FUTURES, OPTIONS, SWAPS, AND
22 SPECULATIVE INFORMATION MARKET CONTRACTS.—A
23 violation of this section involving a transaction involving
24 a commodity, a contract of sale of a commodity for future
25 delivery, an option, a swap, or a contract of sale of a com-

1 commodity offered through a speculative information market
2 shall be treated as a violation of section 6(c) of the Com-
3 modity Exchange Act (7 U.S.C. 9), and the Commodity
4 Futures Trading Commission may enforce that violation
5 in the same manner, by the same means, and with the
6 same jurisdiction, powers, and remedies available to the
7 Commodity Futures Trading Commission under such sec-
8 tion 6(c), without regard to whether that transaction
9 would otherwise (but for the operation of this subsection)
10 constitute a violation of such section 6(c).

11 (f) RULEMAKING.—Not later than 180 days after the
12 date of enactment of this Act, the Securities and Ex-
13 change Commission and the Commodity Futures Trading
14 Commission shall jointly issue such rules as may be nec-
15 essary to carry out this section.

16 **SEC. 4. PROHIBITION ON PRIORITIZED ACCESS TO COV-**
17 **ERED SOCIAL MEDIA ACCOUNTS.**

18 (a) PROHIBITION.—

19 (1) IN GENERAL.—It shall be unlawful for a so-
20 cial media platform, directly or indirectly, to know-
21 ingly offer, provide, sell, license, or otherwise make
22 available prioritized access to a communication
23 issued through a covered social media account.

24 (2) RULES OF CONSTRUCTION.—Nothing in
25 paragraph (1) shall be construed to restrict—

1 (A) the ability of a social media platform
2 to offer prioritized access to a communication
3 issued through an account or profile that is not
4 a covered social media account;

5 (B) the use by a social media platform of
6 algorithmic content ranking or the delivery of
7 content or information intended for a specific
8 user at no additional cost to the user and on
9 the basis of data held by the social media plat-
10 form that identifies, or is used to predict, con-
11 tent or information that could be of interest to
12 that user;

13 (C) the ability of a social media platform
14 to offer prioritized access directly to a Federal,
15 territorial, Tribal, State, or local agency or to
16 first responders and a segment of the public at
17 the direction of such an agency, for the purpose
18 of communicating information concerning public
19 health or public safety, or in the event of emer-
20 gency or disaster, provided that no fee is
21 charged to any third-party recipient of such
22 prioritized access; or

23 (D) the offering, provision, or licensing by
24 a social media platform of programmatic, appli-
25 cation programming interface, or data-licensing

1 access to a communication issued through a
2 covered social media account, provided that
3 such access—

4 (i) is offered on reasonable terms that
5 do not discriminate among recipients of
6 comparable programmatic or data-licensing
7 access;

8 (ii) does not make the communication
9 available to a person, or class of persons,
10 before the communication is generally
11 available; and

12 (iii) does not confer any advantage in
13 timing or latency, relative to the general
14 availability of the communication, that is
15 conditioned on the payment of a fee or on
16 membership in a closed or restricted class
17 of recipients.

18 (b) CIVIL PENALTIES.—

19 (1) IN GENERAL.—A social media platform that
20 violates subsection (a) shall be subject to a civil pen-
21 alty in an amount equal to the total revenue received
22 by the platform for the prioritized access that gave
23 rise to the violation.

24 (2) RECOVERY.—The Attorney General may
25 bring a civil action in an appropriate district court

1 of the United States to recover a civil penalty under
2 paragraph (1).