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

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 

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.

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 “Foreign Agents Registration Amendments Act of 2018”.

SEC. 2. FOREIGN OPERATIVES AND AGENTS REGISTRATION INVESTIGATION AND ENFORCEMENT UNIT.

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

“(c) Not later than 180 days after the date of enactment of this subsection, the Attorney General shall establish a unit within the counterespionage section of the National Security Division of the Department of Justice with responsibility for the enforcement of laws against suspected operatives or unregistered agents of foreign governments.

“(d) The unit established under subsection (c) is authorized to—

“(1) take appropriate legal action against individuals suspected of violating subsection (a) or (b) of section 951 of title 18; and

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

“(e) The Attorney General shall, as appropriate, consult with the Director of National Intelligence, the Secretary of Homeland Security, and the Secretary of State.”.
SEC. 3. FOREIGN AGENTS REGISTRATION CRIMINAL ENFORCEMENT.

Section 951 of title 18, United States Code, is amended by striking subsections (a) through (e) and inserting the following:

“(a) OPERATIVES OF FOREIGN GOVERNMENTS.—

“(1) IN GENERAL.—Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an operative of a foreign government without prior notification to the Attorney General if required in paragraph (2), shall be fined under this title or imprisoned not more than 10 years, or both.

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

“(3) TRANSMISSION.—The Attorney General shall, upon receipt, promptly transmit 1 copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.
“(4) **DEFINITIONS.**—For purposes of this section, the term ‘operative of a foreign government’ means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include—

“(A) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

“(B) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

“(C) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an officer, official, or representative described in paragraph (A) or (B), who is not a United States citizen; or

“(D) any person engaged in a legal commercial transaction.

“(5) **RULE OF CONSTRUCTION.**—Notwithstanding paragraph (4)(D), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—
“(A) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

“(B) such person—

“(i) is an agent of Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of this section, unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

“(ii) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, except that the provisions of this subsection shall not apply to a person described in this clause for a pe-
period of more than five years beginning on
the date of the conviction or the date of
entry of the plea of nolo contendere, as the
case may be.

“(b) FOREIGN AGENTS REGISTRATION CRIMINAL
ENFORCEMENT.—

“(1) Violations; false statements and
willful omissions.—Any person who—

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

“(B) in any registration statement or sup-
plement thereto or in any other document filed
with or furnished to the Attorney General
under the provisions of the Foreign Agents
Registration Act of 1938 (22 U.S.C. 611 et
seq.) willfully makes a false statement of a ma-
terial fact or willfully omits any material fact
required to be stated therein or willfully omits
a material fact or a copy of a material docu-
ment necessary to make the statements therein
and the copies of documents furnished there-
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), (c), 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 reg-
istered under the Foreign Agents Registration Act of
1938 (22 U.S.C. 611 et seq.) to fail to disclose be-
fore or during any meeting with a member of Con-
gress or staff of a member of Congress that the
agent has registered under that Act.”.

SEC. 4. FOREIGN AGENTS REGISTRATION CIVIL ENFORCE-
MENT.

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 EN-
FORCEMENT.—

“(1) CIVIL INVESTIGATIVE DEMANDS.—
“(A) ISSUANCE AND SERVICE.—Whenever the Attorney General, or a designee of the Attorney General, has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation under this section, the Attorney General, or a designee of the Attorney General, may issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

“(i) to produce such documentary material for inspection and copying;

“(ii) to answer in writing written interrogatories with respect to such documentary material or information; or

“(iii) to give oral testimony concerning such documentary material or information.

“(B) REQUIREMENTS.—Each civil investigative demand issued under subparagraph (A) shall state the nature of the conduct constituting the alleged violation of a foreign agents law which is under investigation, and the applicable provision of law alleged to be violated.
“(C) PRODUCTION OF DOCUMENTS.—Each civil investigative demand issued under subparagraph (A) for the production of documentary material shall—

“(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified; and

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

“(D) DEMAND FOR WRITTEN ANSWERS.—Each civil investigative demand issued under subparagraph (A) for answers to written interrogatories shall—

“(i) set forth with specificity the written interrogatories to be answered; and

“(ii) prescribe dates at which time answers to written interrogatories shall be submitted.

“(E) ORAL TESTIMONY.—Each civil investigative demand issued under subparagraph (A) for the giving of oral testimony shall—
“(i) prescribe a date, time, and place at which oral testimony shall be commenced;

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

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

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

“(2) CIVIL PENALTIES.—

“(A) Registration statements.—Whoever fails to file timely or complete registration statement as provided under section 2(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612(a)) shall be subject to a civil fine of not more than $10,000 per violation.

“(B) Supplements.—Whoever fails to file timely or complete supplements as provided under section 2(b) of the Foreign Agents Reg-
istration Act of 1938 (22 U.S.C. 612(b)) shall be subject to a civil fine of not more than $1,000 per violation.

“(C) OTHER VIOLATIONS.—Whoever knowingly fails to—

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

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

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

“(D) NO FINES PAID BY FOREIGN PRINCIPALS.—Whenever a fine is paid under paragraph (1), such fine may not be paid, directly or indirectly, by a foreign principal (as defined in section 1 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611).

“(E) USE OF FINES.—All fines collected under this subsection shall be used to defray the cost of the Foreign Operatives and Agents Enforcement Unit established under section 509A(c) of title 28.”.
SEC. 5. REMOVING THE LOBBYING DISCLOSURE ACT EXEMPTION.

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

(b) Lobbying Disclosure Act.—

(1) In General.—Section 4(a)(3) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(a)(3)) is amended by adding at the end the following:

“(C) Foreign agents.—Any person required to register as an agent of a foreign principal in accordance with the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.) is not required to register under this subsection.”.

(2) Effective Date.—The amendments made by paragraph (1) shall take effect 180 days after the date of enactment of this Act.

SEC. 6. ENHANCING PUBLIC ACCESS TO DATABASE OF FOREIGN AGENTS.

Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate regulations that modernize the input and output data for disclosures under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), including regulations that provide that—
(1) not later than 2 years after the effective
date of the regulations, require all users to file the
disclosures through an online database, except under
limited circumstances established by the Attorney
General;

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

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

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

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

SEC. 7. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) meaningful enforcement of the Foreign
Agents Registration Act of 1938 (22 U.S.C. 611 et
seq.) is vital to the national security of the United
States and the integrity of our democratic process;

and

(2) the enforcement of that Act by the Department of Justice must include civil and criminal penalties, in addition to ongoing efforts to promote voluntary compliance.