

114TH CONGRESS
2D SESSION

S. 2802

To provide adequate protections for gun owners.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2016

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

A BILL

To provide adequate protections for gun owners.

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 “Protecting Gun Rights
5 and Due Process Act”.

6 **SEC. 2. DEFINITIONS RELATING TO MENTAL HEALTH.**

7 (a) TITLE 18 DEFINITIONS.—Chapter 44 of title 18,
8 United States Code, is amended—

9 (1) in section 921(a), by adding at the end the
10 following:

11 “(36)(A) Subject to subparagraph (B), the
12 term ‘has been adjudicated mentally incompetent or

1 has been committed to a psychiatric hospital’, with
2 respect to a person—

3 “(i) means the person is the subject of an
4 order or finding by a judicial officer or court—

5 “(I) that was issued after a hearing—

6 “(aa) of which the person re-
7 ceived actual notice; and

8 “(bb) at which the person had an
9 opportunity to participate with coun-
10 sel; and

11 “(II) that found that the person, as a
12 result of marked subnormal intelligence,
13 mental impairment, mental illness, incom-
14 petency, condition, or disease—

15 “(aa) was guilty but mentally ill
16 in a criminal case, in a jurisdiction
17 that provides for such a verdict;

18 “(bb) was not guilty in a criminal
19 case by reason of insanity or mental
20 disease or defect;

21 “(cc) was incompetent to stand
22 trial in a criminal case; or

23 “(dd) was not guilty by reason of
24 lack of mental responsibility under
25 section 850a of title 10 (article 50a of

1 the Uniform Code of Military Jus-
2 tice); and

3 “(ii) does not include—

4 “(I) an admission to a psychiatric
5 hospital for observation; or

6 “(II) a voluntary admission to a psy-
7 chiatric hospital.

8 “(B) In this paragraph, the term ‘order or find-
9 ing’ does not include—

10 “(i) an order or finding that has expired or
11 has been set aside or expunged;

12 “(ii) an order or finding that is no longer
13 applicable because a judicial officer or court has
14 found that the person who is the subject of the
15 order or finding—

16 “(I) does not present a danger to him-
17 self or herself or to others;

18 “(II) has been restored to sanity or
19 cured of mental disease or defect;

20 “(III) has been restored to com-
21 petency; or

22 “(IV) no longer requires involuntary
23 inpatient or outpatient treatment by a psy-
24 chiatric hospital; or

1 “(iii) an order or finding with respect to
2 which the person who is subject to the order or
3 finding has been granted relief from disabilities
4 under section 925(c), under a program de-
5 scribed in section 101(c)(2)(A) or 105 of the
6 NICS Improvement Amendments Act of 2007
7 (18 U.S.C. 922 note), or under any other State-
8 authorized relief from disabilities program of
9 the State in which the original commitment or
10 adjudication occurred.

11 “(37) The term ‘psychiatric hospital’ includes a
12 mental health facility, a mental hospital, a sani-
13 tarium, or a psychiatric facility, including a psy-
14 chiatric ward in a general hospital.”; and

15 (2) in section 922—

16 (A) in subsection (d)(4)—

17 (i) by striking “as a mental defective”
18 and inserting “mentally incompetent”; and

19 (ii) by striking “any mental institu-
20 tion” and inserting “a psychiatric hos-
21 pital”; and

22 (B) in subsection (g)(4)—

23 (i) by striking “as a mental defective
24 or who has” and inserting “mentally in-
25 competent or has”; and

1 (ii) by striking “mental institution”
2 and inserting “psychiatric hospital”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

4 The NICS Improvement Amendments Act of 2007 (18
5 U.S.C. 922 note) is amended—

6 (1) by striking “as a mental defective” each
7 place that term appears and inserting “mentally in-
8 competent”;

9 (2) by striking “mental institution” each place
10 that term appears and inserting “psychiatric hos-
11 pital”;

12 (3) in section 101(c)—

13 (A) in paragraph (1), in the matter pre-
14 ceding subparagraph (A), by striking “to the
15 mental health of a person” and inserting “to
16 whether a person is mentally incompetent”; and

17 (B) in paragraph (2)—

18 (i) in subparagraph (A)(i), by striking
19 “to the mental health of a person” and in-
20 serting “to whether a person is mentally
21 incompetent”; and

22 (ii) in subparagraph (B), by striking
23 “to the mental health of a person” and in-
24 serting “to whether a person is mentally
25 incompetent”; and

1 (4) in section 102(c)(3)—

2 (A) in the paragraph heading, by striking
3 “AS A MENTAL DEFECTIVE OR COMMITTED TO
4 A MENTAL INSTITUTION” and inserting “AS
5 MENTALLY INCOMPETENT OR COMMITTED TO A
6 MENTAL INSTITUTION”; and

7 (B) by striking “mental institutions” and
8 inserting “psychiatric hospitals”.

9 **SEC. 3. PROTECTING THE SECOND AMENDMENT RIGHTS OF**
10 **VETERANS.**

11 (a) DEFINITION.—In this section, the term “covered
12 veteran” means a person who, on the day before the date
13 of enactment of this Act, is considered to have been adju-
14 dicated as a mental defective or committed to a mental
15 institution under subsection (d)(4) or (g)(4) of section 922
16 of title 18, United States Code, as a result of having been
17 found by the Department of Veterans Affairs to be men-
18 tally incompetent.

19 (b) REVIEW.—The Secretary of Veterans Affairs
20 shall—

21 (1) not later than 90 days after the date of en-
22 actment of this Act, conduct a review relating to
23 each covered veteran to determine whether the pro-
24 ceedings for the adjudication or commitment of the
25 covered veteran were conducted in accordance with,

1 and resulted in an order or finding described in, sec-
2 tion 921(a)(36) of title 18, United States Code, as
3 added by this Act; and

4 (2) unless the Secretary certifies that the pro-
5 ceedings were conducted in accordance with, and re-
6 sulted in an order or finding described in, section
7 921(a)(36) of title 18, United States Code, as added
8 by this Act, ensure that the records of the covered
9 veteran used for purposes of any determination of
10 whether the covered veteran is disqualified from pos-
11 sessing or receiving a firearm under subsection (g)
12 or (n) of section 922 of title 18, United States Code,
13 are modified to indicate that the covered veteran has
14 not been adjudicated mentally incompetent or com-
15 mitted to a psychiatric hospital.

16 (c) ENFORCEMENT.—

17 (1) IDENTIFICATION OF INACCURATE
18 RECORDS.—Not later than January 1 of each year,
19 the Attorney General shall—

20 (A) review the record of each person who
21 is considered to have been adjudicated mentally
22 incompetent or committed to a psychiatric hos-
23 pital under subsection (d)(4) or (g)(4) of sec-
24 tion 922 of title 18, United States Code, as a

1 result of having been found by the Department
2 of Veterans Affairs to be mentally incompetent;

3 (B) identify each such record that does not
4 include documentation indicating that the pro-
5 ceedings for the adjudication or commitment
6 were conducted in accordance with, and re-
7 sulted in an order or finding described in, sec-
8 tion 921(a)(36) of title 18, United States Code,
9 as added by this Act; and

10 (C) submit to the Secretary of the Treas-
11 ury and Congress a report providing the num-
12 ber of records identified under subparagraph
13 (B).

14 (2) RESCISSION.—Effective on the date on
15 which the Attorney General submits a report under
16 paragraph (1)(C), there is rescinded from the unob-
17 ligated balances in the appropriations account ap-
18 propriated under the heading “GENERAL ADMINIS-
19 TRATION” under the heading “DEPARTMENTAL AD-
20 MINISTRATION” under the heading “DEPART-
21 MENT OF VETERANS AFFAIRS” the amount
22 equal to the product of—

23 (A) the number of records that the report
24 states were identified by the Attorney General
25 under paragraph (1)(B); and

1 (B) \$10,000.

2 (d) APPOINTMENT OF FIDUCIARIES.—

3 (1) IN GENERAL.—Chapter 55 of title 38,
4 United States Code, is amended by adding at the
5 end the following:

6 **“§ 5511. Use of determinations to appoint fiduciaries**

7 “No determination by the Secretary that benefits
8 under this title to which an individual is entitled shall be
9 paid to a fiduciary shall be considered to be a determina-
10 tion that the individual has been adjudicated mentally in-
11 competent for purposes of subsections (d)(4) and (g)(4)
12 of section 922 of title 18.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions for chapter 55 of title 38, United States Code,
15 is amended by adding at the end the following:

“5511. Use of determinations to appoint fiduciaries.”.

16 **SEC. 4. USE OF DETERMINATIONS MADE BY THE COMMIS-**
17 **SIONER OF SOCIAL SECURITY.**

18 (a) TITLE II.—Section 205(j) of the Social Security
19 Act (42 U.S.C. 405(j)) is amended by adding at the end
20 the following:

21 “(11) No determination by the Commissioner of So-
22 cial Security with respect to an individual, including a de-
23 termination that benefits under this title to which such
24 individual is entitled shall be paid to a representative
25 payee, shall be considered to be a determination that the

1 individual has been adjudicated mentally incompetent for
2 purposes of subsections (d)(4) and (g)(4) of section 922
3 of title 18, United States Code.”.

4 (b) TITLE XVI.—Section 1631(a)(2) of such Act (42
5 U.S.C. 1383(a)(2)) is amended by adding at the end the
6 following:

7 “(J) No determination by the Commissioner of Social
8 Security with respect to an individual, including a deter-
9 mination that benefits under this title to which such indi-
10 vidual is entitled shall be paid to a representative payee,
11 shall be considered to be a determination that the indi-
12 vidual has been adjudicated mentally incompetent for pur-
13 poses of subsections (d)(4) and (g)(4) of section 922 of
14 title 18, United States Code.”.

15 (c) ENFORCEMENT.—

16 (1) IDENTIFICATION OF INACCURATE
17 RECORDS.—Not later than January 1 of each year,
18 the Attorney General shall—

19 (A) review the record of each person who
20 is considered to have been adjudicated mentally
21 incompetent or committed to a psychiatric hos-
22 pital under subsection (d)(4) or (g)(4) of sec-
23 tion 922 of title 18, United States Code, as a
24 result of a determination by the Commissioner
25 of Social Security;

1 (B) identify each such record that does not
2 include documentation indicating that the pro-
3 ceedings for the adjudication or commitment
4 were conducted in accordance with, and re-
5 sulted in an order or finding described in, sec-
6 tion 921(a)(36) of title 18, United States Code,
7 as added by this Act; and

8 (C) submit to the Secretary of the Treas-
9 ury and Congress a report providing the num-
10 ber of records identified under subparagraph
11 (B).

12 (2) RESCISSION.—

13 (A) IN GENERAL.—Effective on the date
14 on which the Attorney General submits a report
15 under paragraph (1)(C), there is rescinded from
16 the unobligated balances in the Federal Old-
17 Age and Survivors Insurance Trust Fund, the
18 Federal Disability Insurance Trust Fund, the
19 Federal Hospital Insurance Trust Fund, and
20 the Federal Supplementary Medical Insurance
21 Trust Fund, on a pro rata basis, the amount
22 equal to the product of—

23 (i) the number of records that the re-
24 port states were identified by the Attorney
25 General under paragraph (1)(B); and

1 (ii) \$10,000.

2 (B) TREATMENT OF AMOUNTS.—Amounts
3 rescinded under subparagraph (A) shall be
4 deemed to have been expended for costs de-
5 scribed in section 201(g)(1) of the Social Secu-
6 rity Act (42 U.S.C. 401(g)(1)).

7 **SEC. 5. STATE HEALTH REPORTS.**

8 Section 102(c)(3) of the NICS Improvement Amend-
9 ments Act of 2007 (18 U.S.C. 922 note) is amended by
10 adding at the end the following: “A report made available
11 by a State indicating that a person has been adjudicated
12 as mentally incompetent or committed to a mental institu-
13 tion shall not be used for purposes of any determination
14 of whether a person is disqualified from possessing or re-
15 ceiving a firearm under subsection (g) or (n) of section
16 922 of title 18, United States Code, unless the Attorney
17 General determines that the proceedings for the adjudica-
18 tion or commitment were conducted in accordance with,
19 and resulted in an order or finding described in, section
20 921(a)(36) of title 18, United States Code, and that the
21 State has provided clear and convincing evidence that the
22 person poses a significant danger.”.

23 **SEC. 6. APPLICABILITY OF AMENDMENTS.**

24 With respect to any record of a person prohibited
25 from possessing or receiving a firearm under subsection

1 (d)(4) or (g)(4) of section 922 of title 18, United States
2 Code, before the date of enactment of this Act, the Attor-
3 ney General shall remove such a record from the National
4 Instant Criminal Background Check System—

5 (1) upon being made aware that the person is
6 no longer considered as adjudicated mentally incom-
7 petent or committed to a psychiatric hospital accord-
8 ing to the criteria under paragraph (36)(A)(i)(II) of
9 section 921(a) of title 18, United States Code (as
10 added by this Act), and is therefore no longer pro-
11 hibited from possessing or receiving a firearm;

12 (2) upon being made aware that any order or
13 finding that the record is based on is an order or
14 finding described in paragraph (36)(B) of section
15 921(a) of title 18, United States Code (as added by
16 this Act); or

17 (3) upon being made aware that the person has
18 been found competent to possess a firearm after an
19 administrative or judicial review under subsection (c)
20 or (d) of section 5511 of title 38, United States
21 Code (as added by this Act).

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