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SENATE

{ REPORT
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VETERANS SECOND AMENDMENT PROTECTION ACT

SEPTEMBER 4, 2013.—Ordered to be printed

Filed, under authority of the order of the Senate of August 1, 2013.

Mr. SANDERS, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany S. 572]

The Committee on Veterans' Affairs (hereinafter, "the Committee"), to which was referred the bill (S. 572), to amend title 38, United States Code, to clarify the conditions under which certain persons may be treated as adjudicated mentally incompetent for certain purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

INTRODUCTION

On March 14, 2013, Committee Ranking Minority Member Richard Burr introduced S. 572, which would amend the criteria used by the Department of Veterans Affairs (hereinafter, "VA") in reporting names of VA beneficiaries to the Federal Bureau of Investigation (hereinafter, "FBI") for entry into the National Instant Criminal Background Check System (hereinafter, "NICS"). Committee Members John Boozman and Jerry Moran are original cosponsors, as are Senators Saxby Chambliss, Mike Crapo, Michael B. Enzi, James M. Inhofe, James E. Risch, Pat Roberts, John Thune, David Vitter, and Roger F. Wicker. Senators Thad Cochran and Jeff Sessions were later added as cosponsors. The bill was referred to the Committee.

COMMITTEE HEARING

On June 12, 2013, the Committee held a hearing on legislation pending before the Committee at which testimony on S. 572, among other bills, was offered by Curtis L. Coy, Deputy Under Secretary for Economic Opportunity, Veterans Benefits Administra-

tion, Department of Veterans Affairs; Ryan Gallucci, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; and Ian De Planque, Deputy Director, National Legislative Commission, The American Legion.

COMMITTEE MEETING

On July 24, 2013, the Committee met in open session to consider legislation pending before the Committee. Among the measures so considered was S. 572. The Committee voted, without dissent, to report favorably S. 572 to the Senate.

SUMMARY OF S. 572 AS REPORTED

S. 572 consists of two sections, summarized below:

Section 1 would provide a short title.

Section 2 would clarify the conditions under which VA beneficiaries may be treated as adjudicated mentally defective for purposes of reporting their names to the FBI for entry into the NICS.

BACKGROUND AND DISCUSSION

Sec. 2. Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.

Section 2 would clarify the conditions under which VA beneficiaries may be treated as adjudicated mentally defective for purposes of reporting their names to the FBI for entry into the NICS.

Background. The Gun Control Act of 1968 (hereinafter, “GCA”), Public Law 90–618, and subsequent amendments established categories of persons who are prohibited from receiving or possessing firearms. Included among the categories is any person who has been “adjudicated as a mental defective or who has been committed to any mental institution.” Section 478.11 of title 27, Code of Federal Regulations, defines the phrase “adjudicated as a mental defective” as follows:

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

- (1) Is a danger to himself or to others; or
- (2) Lacks the mental capacity to contract or manage his own affairs.

The Brady Handgun Violence Prevention Act of 1993 (hereinafter, the “Brady Act”), Public Law 103–159, required the Attorney General to establish a system to assist federally licensed gun dealers in determining whether a prospective gun buyer is prohibited under the GCA from purchasing a firearm. The system developed pursuant to the Brady Act, NICS, is a computerized database operated by the FBI NICS Section. The NICS can be queried by gun dealers to determine whether the name of a prospective buyer is on the list and, therefore, legally prohibited from purchasing a firearm.

The Brady Act also requires federal agencies, upon the request of the Attorney General, to submit to the FBI information on persons prohibited from purchasing a firearm. The Attorney General made such a request to VA in 1998. Under a Memorandum of Understanding entered into between the FBI and VA, VA agreed to make available for inclusion in the NICS database information about VA beneficiaries who are determined to be mentally incompetent on account of their inability to contract or manage their own affairs pursuant to section 3.353 of title 38, Code of Federal Regulations. Determinations of incompetency under section 3.353 result in an appointment of a fiduciary.

The evidence gathered to support a finding of incompetency, under section 3.353 of VA's regulations, is used to inform a judgment about whether a beneficiary is capable of managing his or her VA benefit payments. No evidence is gathered as part of this process to inform a judgment about whether a beneficiary presents a danger to himself, herself, or others or whether the individual should be prohibited from purchasing, possessing, or operating a firearm. Furthermore, although beneficiaries are entitled to a hearing once notified that it is proposed they will be determined incompetent, the initial hearing is before VA personnel, not an independent authority.

According to VA, as of April 2013, there were 143,580 VA beneficiaries who require a fiduciary on the NICS list, including 83,764 veterans, 42,636 surviving spouses, 2,733 minor children, and 86 dependent parents. Although the NICS reporting requirements apply to all federal agencies, over 99 percent of all names submitted by the federal government to the NICS by reason of mental health have been submitted by VA. That is true despite the fact that other federal agencies, such as the Social Security Administration, appoint representatives to manage benefit payments for their beneficiaries in a manner similar to VA's process.

Committee Bill. S. 572 would amend chapter 55 of title 38, United States Code, by adding a new section, to clarify that in any case arising out of VA's administration of benefits under title 38, a VA beneficiary who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness, shall not be considered adjudicated as a mental defective under the GCA without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such individual is a danger to himself, herself, or others.

COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, "CBO"), estimates that enactment of S. 572 would, relative to current law, have no significant budgetary impact. Enactment of S. 572 would not affect the budget of state, local, or tribal governments.

The cost estimate provided by CBO follows:

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 8, 2013.

Hon. BERNARD SANDERS,
Chairman,
Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 572, the Veterans Second Amendment Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

S. 572—Veterans Second Amendment Protection Act

S. 572 would modify an existing requirement that certain individuals determined to be mentally incompetent by the Department of Veterans Affairs (VA) be prohibited from purchasing or possessing legal firearms. CBO expects that implementing S. 572 would have no significant budgetary impact.

Under current law, when VA deems individuals to be mentally incapacitated, mentally incompetent, experiencing an extended loss of consciousness, or otherwise unable to manage their own affairs, it is required to provide that information to the Department of Justice (DOJ). Such individuals are then added to the list of those prohibited from purchasing or possessing firearms. Under S. 572, a judicial authority would have to determine that veterans are dangerous before VA would be required to report them to DOJ. CBO expects that such a requirement would have an insignificant impact on VA's workload.

Enacting S. 572 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 572 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On May 13, 2013, CBO transmitted a cost estimate for H.R. 602, the Veterans 2nd Amendment Protection Act, as ordered reported by the House Committee on Veterans' Affairs on May 8, 2013. That bill's language is similar to the text of S. 572 and CBO similarly estimated no significant budgetary impact for H.R. 602.

The CBO staff contact for this estimate is Dwayne M. Wright. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out S. 572. The Committee finds that S. 572 would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any individuals and that the paper-work resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by Members of the Committee on Veterans' Affairs at its July 24, 2013, meeting. On that date, the Committee considered and ordered reported S. 572, a bill providing that VA beneficiaries who are found in need of a fiduciary to handle their VA benefits will no longer be included in the NICS unless a judge, magistrate, or other judicial authority determines that they are a danger to themselves or others. The bill, S. 572, was agreed to by a voice vote.

AGENCY REPORT

On June 12, 2013, Curtis Coy, Deputy Under Secretary for Economic Opportunity, Veterans Benefits Administration, Department of Veterans Affairs, appeared before the Committee on Veterans' Affairs and submitted testimony on, among other things, S. 572. Excerpts from this statement are reprinted below:

STATEMENT OF CURTIS COY, DEPUTY UNDER SECRETARY FOR ECONOMIC OPPORTUNITY, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

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S. 572

S. 572, the "Veterans Second Amendment Protection Act," would provide that a person who is mentally incapacitated, deemed mentally incompetent, or unconscious for an extended period will not be considered adjudicated as a "mental defective" for purposes of the Brady Handgun Violence Prevention Act in the absence of an order or finding by a judge, magistrate, or other judicial authority that such person is a danger to himself, herself, or others. The bill would, in effect, exclude VA determinations of incompetency from the coverage of the Brady Handgun Violence Prevention Act. VA does not support this bill.

VA determinations of mental incompetency are based generally on whether a person, because of injury or disease, lacks the mental capacity to manage his or her own financial affairs. We believe adequate protections can be provided to these Veterans under current statutory authority. Under the [National Instant Criminal Background Check System] NICS Improvement Amendments Act of 2007, individuals whom VA has determined to be incompetent can have their firearms rights restored in two ways: First, a person who has been adjudicated by VA as unable to manage his or her own affairs can reopen the issue based on new evidence and have the determination reversed. When this occurs, VA is obligated to notify the Department of Justice to remove the individual's name from the roster of those barred from possessing and purchasing firearms. Second, even if a person remains adjudicated incompetent by VA for purposes of handling his or her own finances, he or she is entitled to petition VA to have firearms rights restored on the basis that the individual poses no threat to public safety. VA has relief procedures in place, and we are fully committed to continuing to conduct

these procedures in a timely and effective manner to fully protect the rights of our beneficiaries.

Also, the reliance on an administrative incompetency determination as a basis for prohibiting an individual from possessing or obtaining firearms under Federal law is not unique to VA or Veterans. Under the applicable Federal regulations implementing the Brady Handgun Violence Prevention Act, any person determined by a lawful authority to lack the mental capacity to manage his or her own affairs is subject to the same prohibition. By exempting certain VA mental health determinations that would otherwise prohibit a person from possessing or obtaining firearms under Federal law, the bill would create a different standard for Veterans and their survivors than that applicable to the rest of the population and could raise public safety issues.

The enactment of S. 572 would not impose any costs on VA.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 572 are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38. VETERANS' BENEFITS

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PART I. GENERAL PROVISIONS

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PART IV. GENERAL ADMINISTRATIVE PROVISIONS

CHAPTER 51. CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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CHAPTER 55. MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.

5501. Commitment actions.

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5510. Annual report.

5511. *Conditions for treatment of certain persons as adjudicated mentally incompetent for certain purposes.*

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SEC. 5501. COMMITMENT ACTIONS.

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SEC. 5511. CONDITIONS FOR TREATMENT OF CERTAIN PERSONS AS ADJUDICATED MENTALLY INCOMPETENT FOR CERTAIN PURPOSES.

In any case arising out of the administration by the Secretary of laws and benefits under this title, a person who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered adjudicated as a mental defective under subsection (d)(4) or (g)(4) of section 922 of title 18 without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.

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