

Amendment Number 3109

Veterans 2nd Amendment Protection Act

The Veteran 2nd Amendment Protection Act requires all veterans who are considered mentally incompetent for purposes of assigning benefit payments, not be considered “adjudicated as a mental defective” unless they have been found by a judicial authority to be a danger to themselves or to others.

Current Department of Veterans Affairs and Bureau of Alcohol, Tobacco, and Firearms Enforcement Regulations Unfairly Deprive Veterans’ Second Amendment Rights.

- As a result of the Brady Bill, the Bureau of Alcohol, Tobacco, and Firearms Enforcement Regulations (ATF) promulgated regulations to define the term “adjudicated as a mental defective.” Anyone covered under this definition is prohibited from purchasing or possessing a firearm.
- Unfortunately, this regulation was overly expansive and included individuals who are in no danger to themselves or to others but simply cannot manage their own affairs.¹
- The Department of Veterans Affairs (VA) consequently determined that the ATF regulations directed them to send the names of all those determined to be “mentally-incompetent” to ATF to be included on National Instant Criminal Background Check System (NICS) and prohibited from purchasing or possessing firearms.
- The current regulations have prompted the VA to forward the names of Veterans who are in no danger to themselves but merely depend on others to manage their finances.² In fact, the type of disability a veteran may suffer from is not considered – even if they may be found to be a danger to themselves or to others.

These Regulations Need to Be Changed

- How is it fair for law-abiding veterans, who have served our country to have their Second Amendment rights revoked even though they are in no danger to themselves or to others?
- This legislation would ensure that law-abiding veterans must be determined to be a danger to themselves or to others before their names are forwarded to NICS, and that this determination would be made by competent jurisdiction.

Other Considerations.

- These regulations also ensure that a veteran is not determined to be “adjudicated as a mental defective” until after receiving due process (Social workers within the Veterans Benefits

¹27 C.F.R. § 478.11, “(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.**”¹

² 38 CFR 3.353a – “(a) Definition of mental incompetency. A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

Administration can make these determinations that bar veterans from owning or purchasing firearms).

- As of August 2011, the VA accounted for 98 percent of NICS submissions by a federal agency for mental health concerns. Veterans account for 11 percent of all Americans included in NICS as persons prohibited from possessing or purchasing firearms because of mental health concerns (138,968 of 1,286,489 individuals).³

Conclusion

- This legislation simply clarifies Congress' intent to prevent law-abiding veterans who are in no danger to themselves or to others not be prohibited from bearing arms.

³ NICS Index Stats(as of 8/31/2011)