

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1041  
OFFERED BY MR. BOST OF ILLINOIS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Veterans 2nd Amend-  
3 ment Protection Act”.

**4 SEC. 2. PROHIBITION ON SECRETARY OF VETERANS AF-  
5 FAIRS TRANSMITTAL OF CERTAIN INFORMA-  
6 TION TO THE DEPARTMENT OF JUSTICE FOR  
7 USE BY THE NATIONAL INSTANT CRIMINAL  
8 BACKGROUND CHECK SYSTEM.**

9       (a) IN GENERAL.—Chapter 55 of title 38, United  
10 States Code, is amended by inserting after section 5501A  
11 the following new section:

**12 “§ 5501B. Prohibition on transmittal of certain infor-  
13 mation to the Department of Justice for  
14 use by the national instant criminal back-  
15 ground check system**

16       “The Secretary may not transmit to any entity in the  
17 Department of Justice, for use by the national instant  
18 criminal background check system established under sec-

tion 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901; Public Law 103–159; 107 Stat. 1541), personally identifiable information of a beneficiary, solely on the basis of a determination by the Secretary to pay benefits to a fiduciary for the use and benefit of the beneficiary under section 5502 of this title, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such beneficiary is a danger to themselves or others.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by inserting after the item relating to section 5501A the following new item:

“5501B. Prohibition on transmittal of certain information to the Department of Justice for use by the national instant criminal background check system.”.

**SEC. 3. NOTIFICATION OF LACK OF BASIS FOR THE SECRETARY OF VETERANS AFFAIRS TO HAVE TRANSMITTED CERTAIN INFORMATION TO THE DEPARTMENT OF JUSTICE FOR USE BY THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.**

(a) IN GENERAL.—Such chapter (as amended by section 2) is further amended by inserting after section 5501B the following new section:

1 **“§ 5501C. Notification of lack of basis for transmittal**  
2 **of certain information to the Department**  
3 **of Justice for use by the national instant**  
4 **criminal background check system**

5 “The Secretary shall, within 30 days of the enact-  
6 ment of the Veterans 2nd Amendment Protection Act, and  
7 in accordance with section 103(e)(1)(D) of the Brady  
8 Handgun Violence Prevention Act (34 U.S.C.  
9 40901(e)(1)(D); Public Law 103–159; 107 Stat. 1541),  
10 notify the Attorney General that the basis for the trans-  
11 mittal, on or after November 30, 1993, by the Secretary,  
12 of personally identifiable information of a beneficiary, sole-  
13 ly on the basis of a determination by the Secretary to pay  
14 benefits to a fiduciary for the use and benefit of the bene-  
15 ficiary under section 5502 of this title, to any entity in  
16 the Department of Justice, for use by the national instant  
17 criminal background check system established under sec-  
18 tion 103 of the Brady Handgun Violence Prevention Act  
19 (34 U.S.C. 40901; Public Law 103–159; 107 Stat. 1541),  
20 does not apply, or no longer applies.”.

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 at the beginning of such chapter (as amended by section  
23 2) is further amended by inserting after the item relating  
24 to section 5501B the following new item:

“5501C. Notification of lack of basis for transmittal of certain information to  
the Department of Justice for use by the national instant  
criminal background check system.”.

1 **SEC. 4. DETERMINATION BY THE SECRETARY OF VET-**  
2 **ERANS AFFAIRS THAT A PERSON IS MEN-**  
3 **TALLY INCOMPETENT IS INSUFFICIENT TO**  
4 **TREAT SUCH PERSON AS A MENTAL DEFEC-**  
5 **TIVE.**

6 (a) IN GENERAL.—Such chapter (as amended by sec-  
7 tions 2 and 3) is further amended by inserting after sec-  
8 tion 5501C the following new section:

9 **“§ 5501D. Determination of mental incompetence is**  
10 **insufficient basis to treat a person as a**  
11 **mental defective**

12 “The Secretary shall not treat a person as having  
13 been adjudicated as a mental defective solely on the basis  
14 that the Secretary has determined that such person—

15 “(1) is mentally incompetent under section  
16 3.353 of title 38, Code of Federal Regulations (or  
17 successor regulation); or

18 “(2) requires a fiduciary under section 5502 of  
19 this title.”.

20 (b) CLERICAL AMENDMENT.—The table of sections  
21 at the beginning of such chapter (as amended by sections  
22 2 and 3) is further amended by inserting after the item  
23 relating to section 5501C the following new item:

“5501D. Determination of mental incompetence is insufficient basis to treat a  
person as a mental defective”.

Amend the title so as to read: “A bill to amend title 38, United States Code, to prohibit the Secretary of Veterans Affairs from transmitting certain information to the Department of Justice for use by the national instant criminal background check system, and for other purposes.”.

