



**GUN OWNERS OF AMERICA**

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**Via Email:**

To: Michael Csencsits, Deputy Director of Operations  
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Gun Owners of America

From: Joshua Barnhill, State Legislative Counsel  
Gun Owners of America

Re: Analysis of Tennessee House Bill No. 768

House Bill No. 768 can be described as an anti-Second Amendment bill in sheep's clothing. Specifically, this bill infringes on the Second Amendment rights of law-abiding individuals in the name of public safety, while, in the same document, including "pro-gun" provisions to distract from, or worse to incentivize individuals to willingly go along with, these unconstitutional infringements.

**Anti-Second Amendment Provisions:**

Section 1 and Section 2 of HB 768 creates the "Safeguard Against Homicidal Side Effects Act" which prohibits individuals, who are not otherwise prohibited, from purchasing a firearm if they are prescribed certain anti-depressant medications known as SSRI's. Specifically, the bill states:

- 38-11-102(a) "The Tennessee bureau of investigation shall create... a **database** containing the...individuals who have filled a prescription of any of the [anti-depressant medications] listed in [this section] within the last six (6) months."
- 38-11-102(b)(1) "... **filling such prescription will cause the patient to be barred from the purchase of a firearm for the duration of the treatment regimen... *or longer***. The prescribing healthcare professional shall provide the patient with a **[waiver]**... stating... [that] by signing said document the patient... [u]nderstands and agrees to be barred from the purchase of a firearm for at least the duration of the treatment regimen; and... [u]nderstands and agrees that information... will be shared with the Tennessee bureau of investigation[.]"
- 38-11-102(d)(2) "The bureau shall remove a person from the database within thirty (30) days immediately following the passage of six (6) months from the date the patient's last dose taken[.]"
- 39-17-1316(d) "If the purchaser is listed in the database, but not otherwise disqualified from purchasing a firearm, the Tennessee bureau of investigation shall inform the dealer that the disqualification of the purchaser is temporary."

## Concerns:

1. The “Safeguard Against Homicidal Side Effects Act” unconstitutionally infringes on the right to keep and bear arms by forcing individuals to give up their rights in order to obtain mental health treatment. The right to keep and bear arms is an unalienable right and an individual cannot be forced by the government to give it up.
2. This bill raises the same concerns as red-flag laws.
  - a. Much like red flag laws, the purpose of this section of the bill is to deny individuals who are deemed “dangers to themselves or to the public” the right to keep and bear arms upon the premise that the individual is at risk of committing a crime, or hurting themselves at some unknown point in the future.
  - b. Regardless of the public policy goals of this section, its effect is to strip individuals of their God-given right to keep and bear arms without first being adjudicated a prohibited person as a consequence of committing an actual crime or after having a been adjudicated mentally incompetent by a court of law. Indeed, such governmental actions fundamentally shatter the long held American principle “innocent until proven guilty.”
  - c. Under the recent holding of the Supreme Court of the United States in *New York State Rifle and Pistol Assoc., Inc. v. Bruen*, any law the government cannot demonstrate as being consistent with this country’s “historical tradition of firearm regulation” is not “justified” and is unconstitutional. There is absolutely no historical or legal precedent for the taking away of Second Amendment protected rights of individuals whom the government believes may commit a crime, or injure themselves in the future.
3. This bill creates a database which will act as a default registry of gun owners.
4. While the bill requires the Tennessee Bureau of Investigation to remove a person from the database, it does not specifically state that the information is to be destroyed, nor are there any penalties if the bureau fails to comply with this requirement.
5. Given executive branch agencies natural propensity to increase the scope of their narrow mandate to enforce a certain aspect of a given law, it is inevitable that this bill will open the door to include broader categories of medications that will arbitrarily make a citizen a prohibited person. This governmental mission creep is clearly palpable within other regulatory agencies at all levels of government mostly notably within the EPA, IRS, and BATFE.
  - a. Future governors of Tennessee could also employ executive fiat to expand the categories of medications that would make a person prohibited or lengthening the time associated with the temporary prohibition.
  - b. The State of Colorado already tracks and logs most types of prescription medications in a database that is connected to the individual. It is not a forgone conclusion to foresee that at some point such health data will be feed into the background check system to expand the number of prohibited persons.
6. The mental health concentration of this legislation will also have a notable *chilling effect* upon those seeking treatment for common mental disorders due to the fear of having their firearms confiscated. Given [the debate surrounding SSRIs and their possible correlative connection to suicidal or homicidal behavior](#), it is imprudent to pass legislation based upon an unproven scientific assertion that will have the far-reaching consequences for those struggling with mental health issues. Instead of pursuing professional treatment, citizens will be compelled seek out other potentially more destructive means of treatment.

### **Pro-Gun Provisions:**

TCA, [Section 39-17-1309](#), makes it illegal for anyone to possess or carry a firearm on school property subject to those exceptions identified in subsection (e). Sections 3 through 11 of this bill amends subsection (e), expanding those exceptions and allowing more individuals to carry a firearm on school property, including property used for a school-related event or activity.

- Subsection (e)(1) is amended to include both current *and former* military and Tennessee National Guard, as well as remove the requirement that the person be “in the discharge of their official duties and acting under orders requiring them to carry arms or weapons[.]”
- Subsection (e) (2), (4), (6), and (7) are amended to remove the requirement that the persons identified (Civil Officers of the U.S.; state, county, or municipal law enforcement officers; private police; or private security guard/officer) be “in the discharge of their official duties.”
- Subsection (e)(8) is amended to authorize those who have a concealed handgun permit under 39-17-1366, along with those who possess an enhanced permit, to possess a handgun “*within or on a public park, natural area, historic park nature trail, campground, forest, greenway, waterway, or other similar public place.*” Additionally, subsection (e)(8)(B) is removed, which prohibits the carry of a firearm in the above identified public places if such places are owned or operated by a school, or the public property is being used for a school-related activity.
- Subsection (e)(14) is added, allowing a person who possesses an enhanced permit, and who is not a K-12 student, to carry a concealed firearm on their person.

### **Conclusion:**

1. Sections 1 and 2 of HB 768 infringe upon the rights protected by the Second Amendment to the United States Constitution and should be removed from the bill.
2. The remaining sections of HB 768 are positive in that they create additional exceptions to the prohibition of carrying a firearm on school property, allowing additional individuals, including those with enhanced permits, to carry a firearm on school property.