

Calendar No. 242

115TH CONGRESS }
1st Session }

SENATE

{ REPORT
115-172

TO AMEND THE ETHICS IN GOVERNMENT
ACT OF 1978 TO REAUTHORIZE THE JUDI-
CIAL CONFERENCE OF THE UNITED
STATES TO REDACT SENSITIVE INFORMA-
TION CONTAINED IN FINANCIAL DISCLO-
SURE REPORTS OF JUDICIAL OFFICERS
AND EMPLOYEES, AND FOR OTHER PUR-
POSES

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1584



OCTOBER 16, 2017.—Ordered to be printed

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TO AMEND THE ETHICS IN GOVERNMENT ACT OF 1978 TO REAUTHORIZE THE JUDICIAL CONFERENCE OF THE UNITED STATES TO REDACT SENSITIVE INFORMATION CONTAINED IN FINANCIAL DISCLOSURE REPORTS OF JUDICIAL OFFICERS AND EMPLOYEES, AND FOR OTHER PURPOSES

OCTOBER 16, 2017.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1584]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1584) to amend the Ethics in Government Act of 1978 to reauthorize the Judicial Conference of the United States to redact sensitive information contained in financial disclosure reports of judicial officers and employees, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1584 is to permanently reauthorize the Judicial Conference of the United States' authority to redact sensitive information contained in financial disclosure reports of judicial officers and employees.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The Ethics in Government Act of 1978 requires that certain government officials, including judicial officers and certain employees,

make public financial disclosures, among other things.¹ The public may make requests to examine or receive a copy of financial disclosure reports in accordance with the procedure outlined in the statute.²

In 1998, Congress revised the Ethics in Government Act to provide limited protections for judicial officers and employees, in recognition of the fact that they are sometimes the subject of threats or even violence as a result of their public positions and the nature of their judicial work.³ Specifically, the 105th Congress granted the Judicial Conference the ability to redact certain limited information from financial disclosures reports when revealing personal and sensitive information could endanger that individual.⁴ The authority was limited to just three years.⁵

Since that time, Congress has periodically reauthorized the authority, each time for a limited number of years, requiring Congress to keep passing legislation to continue the authority.⁶ The last such extension was authorized by Congress in 2011.⁷ Under current law, the authority is set to expire on December 31, 2017.⁸

The authority granted in the Judicial Conference is limited to ensure that it is carefully and rarely used. According to regulations issued by the Judicial Conference in 1999 and updated several times since, the Judicial Conference’s Committee on Financial Disclosure is responsible for “approv[ing] or disapprov[ing] any requests for the redaction of statutorily mandated information where the release of the information could endanger a filer or a family member.”⁹ Specifically, a filer may request redactions of specific information “to prevent public disclosure of personal or sensitive information that could endanger the filer or a family member directly, or indirectly by endangering another, if possessed by a member of the public hostile to the filer or a family member.”¹⁰

To have a request considered by the Judicial Conference, the filer “must state with specificity what material is sought to be redacted” and “the reasons justifying redaction” including but not limited to “ongoing protective detail provided by the United States Marshals Service”, “particular threats or inappropriate communications”, “a high threat” case, or “certain information on the form that could endanger the filer or a family member directly or indirectly if possessed by a member of the public hostile to the filer or a family member.”¹¹ Once the request and accompanying justification is received, the Judicial Conference works with the U.S. Marshals Service to assess the threat.¹² The redaction may be granted only “to

¹ 5 U.S.C. app. § 101, *et. seq.*

² 5 U.S.C. app. § 105(a), (b)(2).

³ Identity Theft and Assumption Deterrence Act of 1998, Pub. L. No. 105–318 (1998) [hereinafter Identity Theft Act]; 144 Cong. Rec. S12605 (daily ed. Oct. 14, 1998) (Statement of Sen. Patrick Leahy).

⁴ Identity Theft Act, § 7 (codified at 5 U.S.C. app. § 105(b)(3)(A)).

⁵ Identity Theft Act, § 7 (codified as amended at 5 U.S.C. app. § 105(b)(3)(E)).

⁶ See Pub. L. No. 107–126 (2002) (extending the authority from 2001 to 2005); Pub. L. No. 110–24 (2007) (extending the authority from 2005 to 2009); and Pub. L. No. 110–177 (2008) (extending the authority from 2009 to 2011).

⁷ Pub. L. No. 112–84, § 1(3) (2011).

⁸ 5 U.S.C. app. § 105(b)(3)(E).

⁹ *Guide to Judicial Policy*, Ch. 4 Judicial Conference Regulations on Access to Reports, Vol. 2: Ethics and Judicial Conduct, Pt. D: Financial Disclosure at § 440(b), available at http://www.uscourts.gov/sites/default/files/guide-vol02d-ch04_0.pdf [hereinafter *Guide to Judicial Policy*].

¹⁰ *Guide to Judicial Policy* at § 460.20(d).

¹¹ *Id.* at § 460.20(d)(3).

¹² 5 U.S.C. app. § 105(b)(3)(A); *Guide to Judicial Policy* at § 460.20(d)(4).

the extent necessary to protect the individual” and “for as long as the danger to such individual exists.”¹³

Additionally, the Judicial Conference is required to provide annual reports to Congress on the number of filings that included redacted information, the type of information that was redacted, and the types of threats that requestors reported.¹⁴ According to the Judicial Conference, an average of only 2.7 percent of all financial disclosures have contained an approved redaction of some kind over the last five years.¹⁵

Given the limited authority granted to the Judicial Conference and the infrequency in which the authority is used, the Committee supports passing S. 1584—a permanent reauthorization of the authority—prior to its expiration on December 31, 2017.

III. LEGISLATIVE HISTORY

On July 19, 2017, Chairman Ron Johnson and Ranking Member Claire McCaskill introduced S. 1584, a bill to amend the Ethics in Government Act of 1978 to reauthorize the Judicial Conference of the United States to redact sensitive information contained in financial disclosure reports of judicial officers and employees, and for other purposes. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 1584 at a business meeting on July 27, 2017. No amendments were offered. The legislation was approved by voice vote en bloc with Senators Johnson, Portman, Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Redaction authority concerning sensitive security information

Subsection (a) strikes the sunset clause that would have terminated the authority for the Judicial Conference to redact certain financial information on public disclosures at the end of calendar year 2017.

Subsection (b) makes two technical corrections to the Ethics in Government Act of 1978 to fix unintended errors in the original act: it strikes an errant additional comma in one sentence and adds a comma in another sentence.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the Rule. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

¹³ 5 U.S.C. app. § 105(b)(3)(B).

¹⁴ *Id.* at § 105(b)(3)(C).

¹⁵ Information provided to Comm. Staff by the Judicial Conference (July 2017).

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 16, 2017.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1584, a bill to amend the Ethics in Government Act of 1978 to reauthorize the Judicial Conference of the United States to redact sensitive information contained in financial disclosure reports of judicial officers and employees, and for other purposes.

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

Sincerely,

KEITH HALL.

Enclosure.

S. 1584—A bill to amend the Ethics in Government Act of 1978 to reauthorize the Judicial Conference of the United States to redact sensitive information contained in financial disclosure reports of judicial officers and employees, and for other purposes

The Ethics in Government Act of 1978 requires certain government officials to file public disclosures of their financial and employment history. S. 1584 would permanently extend the authority of the Judicial Conference to redact sensitive information contained in financial disclosure reports of judicial officers and employees if the Judicial Conference determines that such disclosure could endanger the individual. Under current law, that authority expires on December 31, 2017.

Based on information from the Administrative Office of the United States Courts regarding the number of requests to redact sensitive information, CBO estimates that implementing S. 1584 would have no significant effect on the federal budget. Enacting S. 1584 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 1584 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 1584 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1584 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in *roman*):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

APPENDIX

* * * * *

ETHICS IN GOVERNMENT ACT

* * * * *

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

* * * * *

SEC. 105. CUSTODY OF AND PUBLIC ACCESS TO REPORTS

- (a) * * *
- (b)

(1) Except as provided in the second sentence of this subsection, each agency, each supervising ethics office in the executive or judicial branch, the Clerk of the House of Representatives, and the Secretary of the Senate shall, within thirty days after any report is received under this title by such agency or office or by the Clerk or the Secretary of the Senate, as the case may be, [] permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. With respect to any report required to be filed by May 15 of any year, such report shall be made available for public inspection within 30 calendar days after May 15 of such year or within 30 days of the date of filing of such a report for which an extension is granted pursuant to section 101(g). The agency, office, Clerk, or Secretary of the Senate, as the case may be, may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

(2) * * *

(3)

(A) * * *

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**[(E) This paragraph shall expire on December 31, 2017,
and apply to filings through calendar year 2017.]**

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