



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB0790

Introduced 2/10/2021, by Rep. Patrick Windhorst

#### SYNOPSIS AS INTRODUCED:

430 ILCS 65/10

from Ch. 38, par. 83-10

Amends the Firearm Owners Identification Card Act. Provides that for any appeal permitted under the Act to the Director of the Illinois State Police for failure to act on a Firearm Owner's Identification Card application within 30 days or its denial, seizure, or revocation, the Director shall either grant or deny the appeal within 60 days of the receipt of the appeal. Provides that if the appeal is granted, the Director shall return the aggrieved party's Firearm Owner's Identification Card to the aggrieved party, or issue him or her a new Firearm Owner's Identification Card, as the case may be, no later than 7 business days after the appeal is granted. Provides that if the appeal is denied, the Director shall set forth in writing the specific reasons for the denial and shall cause the written denial to be mailed to the aggrieved party no later than 7 business days after the appeal is denied. Provides that if the Director fails to either grant or deny the appeal within 60 days of the receipt of the appeal, the appeal shall be considered granted, and the Director shall return the aggrieved party's Firearm Owner's Identification Card or issue him or her a new Firearm Owner's Identification Card, as the case may be, no later than 67 days from the date that the appeal was received. Provides that a denial shall be considered a final administrative order, regardless of whether there was a formal hearing in which evidence was taken, and the aggrieved party may seek judicial review of the final administrative order in accordance with the provisions of the Administrative Review Law and the Act. Provides that if administrative review is taken and if the circuit court then finds that the Director denied the appeal without reasonable cause, the circuit court may award the aggrieved party court costs and a reasonable attorney's fee to be paid by the State. Nothing herein limits the contempt power of the circuit court. Provides that when the word "shall" appears in this provision, it shall be construed as being mandatory and not discretionary.

LRB102 04210 RLC 14227 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Firearm Owners Identification Card Act is  
5 amended by changing Section 10 as follows:

6 (430 ILCS 65/10) (from Ch. 38, par. 83-10)

7 Sec. 10. Appeal to director; hearing; relief from firearm  
8 prohibitions.

9 (a) Whenever an application for a Firearm Owner's  
10 Identification Card is denied, whenever the Department fails  
11 to act on an application within 30 days of its receipt, or  
12 whenever such a Card is revoked or seized as provided for in  
13 Section 8 of this Act, the aggrieved party may appeal to the  
14 Director of State Police for a hearing upon such denial,  
15 revocation or seizure, unless the denial, revocation, or  
16 seizure was based upon a forcible felony, stalking, aggravated  
17 stalking, domestic battery, any violation of the Illinois  
18 Controlled Substances Act, the Methamphetamine Control and  
19 Community Protection Act, or the Cannabis Control Act that is  
20 classified as a Class 2 or greater felony, any felony  
21 violation of Article 24 of the Criminal Code of 1961 or the  
22 Criminal Code of 2012, or any adjudication as a delinquent  
23 minor for the commission of an offense that if committed by an

1 adult would be a felony, in which case the aggrieved party may  
2 petition the circuit court in writing in the county of his or  
3 her residence for a hearing upon such denial, revocation, or  
4 seizure.

5 (b) At least 30 days before any hearing in the circuit  
6 court, the petitioner shall serve the relevant State's  
7 Attorney with a copy of the petition. The State's Attorney may  
8 object to the petition and present evidence. At the hearing  
9 the court shall determine whether substantial justice has been  
10 done. Should the court determine that substantial justice has  
11 not been done, the court shall issue an order directing the  
12 Department of State Police to issue a Card. However, the court  
13 shall not issue the order if the petitioner is otherwise  
14 prohibited from obtaining, possessing, or using a firearm  
15 under federal law.

16 (b-1) For any appeal to the Director of the Illinois State  
17 Police as set forth in subsection (a), the Director shall  
18 either grant or deny the appeal within 60 days of the receipt  
19 of the appeal. If the appeal is granted, the Director shall  
20 return the aggrieved party's Firearm Owner's Identification  
21 Card to the aggrieved party, or issue him or her a new Firearm  
22 Owner's Identification Card, as the case may be, no later than  
23 7 business days after the appeal is granted. If the appeal is  
24 denied, the Director shall set forth in writing the specific  
25 reasons for the denial and shall cause the written denial to be  
26 mailed to the aggrieved party no later than 7 business days

1 after the appeal is denied. If the Director fails to either  
2 grant or deny the appeal within 60 days of the receipt of the  
3 appeal, the appeal shall be considered granted, and the  
4 Director shall return the aggrieved party's Firearm Owner's  
5 Identification Card or issue him or her a new Firearm Owner's  
6 Identification Card, as the case may be, no later than 67 days  
7 from the date that the appeal was received. A denial shall be  
8 considered a final administrative order, regardless of whether  
9 there was a formal hearing in which evidence was taken, and the  
10 aggrieved party may seek judicial review of the final  
11 administrative order in accordance with the provisions of the  
12 Administrative Review Law and Section 11 of this Act. If  
13 administrative review is taken and if the circuit court then  
14 finds that the Director denied the appeal without reasonable  
15 cause, the circuit court may award the aggrieved party court  
16 costs and a reasonable attorney's fee to be paid by the State.  
17 Nothing herein limits the contempt power of the circuit court.  
18 When the word "shall" appears in this subsection (b-1), it  
19 shall be construed as being mandatory and not discretionary.

20 (c) Any person prohibited from possessing a firearm under  
21 Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 or  
22 acquiring a Firearm Owner's Identification Card under Section  
23 8 of this Act may apply to the Director of State Police or  
24 petition the circuit court in the county where the petitioner  
25 resides, whichever is applicable in accordance with subsection  
26 (a) of this Section, requesting relief from such prohibition

1 and the Director or court may grant such relief if it is  
2 established by the applicant to the court's or Director's  
3 satisfaction that:

4 (0.05) when in the circuit court, the State's Attorney  
5 has been served with a written copy of the petition at  
6 least 30 days before any such hearing in the circuit court  
7 and at the hearing the State's Attorney was afforded an  
8 opportunity to present evidence and object to the  
9 petition;

10 (1) the applicant has not been convicted of a forcible  
11 felony under the laws of this State or any other  
12 jurisdiction within 20 years of the applicant's  
13 application for a Firearm Owner's Identification Card, or  
14 at least 20 years have passed since the end of any period  
15 of imprisonment imposed in relation to that conviction;

16 (2) the circumstances regarding a criminal conviction,  
17 where applicable, the applicant's criminal history and his  
18 reputation are such that the applicant will not be likely  
19 to act in a manner dangerous to public safety;

20 (3) granting relief would not be contrary to the  
21 public interest; and

22 (4) granting relief would not be contrary to federal  
23 law.

24 (c-5) (1) An active law enforcement officer employed by a  
25 unit of government, who is denied, revoked, or has his or her  
26 Firearm Owner's Identification Card seized under subsection

1 (e) of Section 8 of this Act may apply to the Director of State  
2 Police requesting relief if the officer did not act in a manner  
3 threatening to the officer, another person, or the public as  
4 determined by the treating clinical psychologist or physician,  
5 and as a result of his or her work is referred by the employer  
6 for or voluntarily seeks mental health evaluation or treatment  
7 by a licensed clinical psychologist, psychiatrist, or  
8 qualified examiner, and:

9 (A) the officer has not received treatment  
10 involuntarily at a mental health facility, regardless of  
11 the length of admission; or has not been voluntarily  
12 admitted to a mental health facility for more than 30 days  
13 and not for more than one incident within the past 5 years;  
14 and

15 (B) the officer has not left the mental institution  
16 against medical advice.

17 (2) The Director of State Police shall grant expedited  
18 relief to active law enforcement officers described in  
19 paragraph (1) of this subsection (c-5) upon a determination by  
20 the Director that the officer's possession of a firearm does  
21 not present a threat to themselves, others, or public safety.  
22 The Director shall act on the request for relief within 30  
23 business days of receipt of:

24 (A) a notarized statement from the officer in the form  
25 prescribed by the Director detailing the circumstances  
26 that led to the hospitalization;

1 (B) all documentation regarding the admission,  
2 evaluation, treatment and discharge from the treating  
3 licensed clinical psychologist or psychiatrist of the  
4 officer;

5 (C) a psychological fitness for duty evaluation of the  
6 person completed after the time of discharge; and

7 (D) written confirmation in the form prescribed by the  
8 Director from the treating licensed clinical psychologist  
9 or psychiatrist that the provisions set forth in paragraph  
10 (1) of this subsection (c-5) have been met, the person  
11 successfully completed treatment, and their professional  
12 opinion regarding the person's ability to possess  
13 firearms.

14 (3) Officers eligible for the expedited relief in  
15 paragraph (2) of this subsection (c-5) have the burden of  
16 proof on eligibility and must provide all information  
17 required. The Director may not consider granting expedited  
18 relief until the proof and information is received.

19 (4) "Clinical psychologist", "psychiatrist", and  
20 "qualified examiner" shall have the same meaning as provided  
21 in Chapter I of the Mental Health and Developmental  
22 Disabilities Code.

23 (c-10) (1) An applicant, who is denied, revoked, or has  
24 his or her Firearm Owner's Identification Card seized under  
25 subsection (e) of Section 8 of this Act based upon a  
26 determination of a developmental disability or an intellectual

1 disability may apply to the Director of State Police  
2 requesting relief.

3 (2) The Director shall act on the request for relief  
4 within 60 business days of receipt of written certification,  
5 in the form prescribed by the Director, from a physician or  
6 clinical psychologist, or qualified examiner, that the  
7 aggrieved party's developmental disability or intellectual  
8 disability condition is determined by a physician, clinical  
9 psychologist, or qualified to be mild. If a fact-finding  
10 conference is scheduled to obtain additional information  
11 concerning the circumstances of the denial or revocation, the  
12 60 business days the Director has to act shall be tolled until  
13 the completion of the fact-finding conference.

14 (3) The Director may grant relief if the aggrieved party's  
15 developmental disability or intellectual disability is mild as  
16 determined by a physician, clinical psychologist, or qualified  
17 examiner and it is established by the applicant to the  
18 Director's satisfaction that:

19 (A) granting relief would not be contrary to the  
20 public interest; and

21 (B) granting relief would not be contrary to federal  
22 law.

23 (4) The Director may not grant relief if the condition is  
24 determined by a physician, clinical psychologist, or qualified  
25 examiner to be moderate, severe, or profound.

26 (5) The changes made to this Section by this amendatory



1 Act of the 99th General Assembly apply to requests for relief  
2 pending on or before the effective date of this amendatory  
3 Act, except that the 60-day period for the Director to act on  
4 requests pending before the effective date shall begin on the  
5 effective date of this amendatory Act.

6 (d) When a minor is adjudicated delinquent for an offense  
7 which if committed by an adult would be a felony, the court  
8 shall notify the Department of State Police.

9 (e) The court shall review the denial of an application or  
10 the revocation of a Firearm Owner's Identification Card of a  
11 person who has been adjudicated delinquent for an offense that  
12 if committed by an adult would be a felony if an application  
13 for relief has been filed at least 10 years after the  
14 adjudication of delinquency and the court determines that the  
15 applicant should be granted relief from disability to obtain a  
16 Firearm Owner's Identification Card. If the court grants  
17 relief, the court shall notify the Department of State Police  
18 that the disability has been removed and that the applicant is  
19 eligible to obtain a Firearm Owner's Identification Card.

20 (f) Any person who is subject to the disabilities of 18  
21 U.S.C. 922(d)(4) and 922(g)(4) of the federal Gun Control Act  
22 of 1968 because of an adjudication or commitment that occurred  
23 under the laws of this State or who was determined to be  
24 subject to the provisions of subsections (e), (f), or (g) of  
25 Section 8 of this Act may apply to the Department of State  
26 Police requesting relief from that prohibition. The Director

1 shall grant the relief if it is established by a preponderance  
2 of the evidence that the person will not be likely to act in a  
3 manner dangerous to public safety and that granting relief  
4 would not be contrary to the public interest. In making this  
5 determination, the Director shall receive evidence concerning  
6 (i) the circumstances regarding the firearms disabilities from  
7 which relief is sought; (ii) the petitioner's mental health  
8 and criminal history records, if any; (iii) the petitioner's  
9 reputation, developed at a minimum through character witness  
10 statements, testimony, or other character evidence; and (iv)  
11 changes in the petitioner's condition or circumstances since  
12 the disqualifying events relevant to the relief sought. If  
13 relief is granted under this subsection or by order of a court  
14 under this Section, the Director shall as soon as practicable  
15 but in no case later than 15 business days, update, correct,  
16 modify, or remove the person's record in any database that the  
17 Department of State Police makes available to the National  
18 Instant Criminal Background Check System and notify the United  
19 States Attorney General that the basis for the record being  
20 made available no longer applies. The Department of State  
21 Police shall adopt rules for the administration of this  
22 Section.

23 (Source: P.A. 98-63, eff. 7-9-13; 99-29, eff. 7-10-15; 99-78,  
24 eff. 7-20-15.)