



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3358

by Rep. Ron Sandack

SYNOPSIS AS INTRODUCED:

430 ILCS 65/10

from Ch. 38, par. 83-10

Amends the Firearm Owners Identification Card Act. Provides that a person who has been denied a Firearm Owner's Identification Card by the Department of State Police for any misdemeanor crime of domestic violence as defined in the federal Gun Control Act of 1968 or whose Firearm Owner's identification Card has been revoked or seized by the Department for that crime may petition the circuit court in writing in the county of his or her residence for a hearing upon the denial, revocation, or seizure (rather than appeal to the Director of State Police for a hearing).

LRB099 05796 RLC 25840 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 to
11 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 misdemeanor crime of domestic
18 violence as defined in 18 U.S.C. 921(a)(33), any violation of
19 the Illinois Controlled Substances Act, the Methamphetamine
20 Control and Community Protection Act, or the Cannabis Control
21 Act that is classified as a Class 2 or greater felony, any
22 felony violation of Article 24 of the Criminal Code of 1961 or
23 the Criminal Code of 2012, or any adjudication as a delinquent

1 minor for the commission of an offense that if committed by an
2 adult would be a felony, in which case the aggrieved party may
3 petition the circuit court in writing in the county of his or
4 her residence for a hearing upon such denial, revocation, or
5 seizure.

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

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

1 (0.05) when in the circuit court, the State's Attorney
2 has been served with a written copy of the petition at
3 least 30 days before any such hearing in the circuit court
4 and at the hearing the State's Attorney was afforded an
5 opportunity to present evidence and object to the petition;

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

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

16 (3) granting relief would not be contrary to the public
17 interest; and

18 (4) granting relief would not be contrary to federal
19 law.

20 (c-5) (1) An active law enforcement officer employed by a
21 unit of government, who is denied, revoked, or has his or her
22 Firearm Owner's Identification Card seized under subsection
23 (e) of Section 8 of this Act may apply to the Director of State
24 Police requesting relief if the officer did not act in a manner
25 threatening to the officer, another person, or the public as
26 determined by the treating clinical psychologist or physician,

1 and as a result of his or her work is referred by the employer
2 for or voluntarily seeks mental health evaluation or treatment
3 by a licensed clinical psychologist, psychiatrist, or
4 qualified examiner, and:

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

11 (B) the officer has not left the mental institution
12 against medical advice.

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

20 (A) a notarized statement from the officer in the form
21 prescribed by the Director detailing the circumstances
22 that led to the hospitalization;

23 (B) all documentation regarding the admission,
24 evaluation, treatment and discharge from the treating
25 licensed clinical psychologist or psychiatrist of the
26 officer;

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

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

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

15 (4) "Clinical psychologist", "psychiatrist", and
16 "qualified examiner" shall have the same meaning as provided in
17 Chapter I ~~±~~ of the Mental Health and Developmental Disabilities
18 Code.

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

22 (e) The court shall review the denial of an application or
23 the revocation of a Firearm Owner's Identification Card of a
24 person who has been adjudicated delinquent for an offense that
25 if committed by an adult would be a felony if an application
26 for relief has been filed at least 10 years after the

1 adjudication of delinquency and the court determines that the
2 applicant should be granted relief from disability to obtain a
3 Firearm Owner's Identification Card. If the court grants
4 relief, the court shall notify the Department of State Police
5 that the disability has been removed and that the applicant is
6 eligible to obtain a Firearm Owner's Identification Card.

7 (f) Any person who is subject to the disabilities of 18
8 U.S.C. 922(d)(4) and 922(g)(4) of the federal Gun Control Act
9 of 1968 because of an adjudication or commitment that occurred
10 under the laws of this State or who was determined to be
11 subject to the provisions of subsections (e), (f), or (g) of
12 Section 8 of this Act may apply to the Department of State
13 Police requesting relief from that prohibition. The Director
14 shall grant the relief if it is established by a preponderance
15 of the evidence that the person will not be likely to act in a
16 manner dangerous to public safety and that granting relief
17 would not be contrary to the public interest. In making this
18 determination, the Director shall receive evidence concerning
19 (i) the circumstances regarding the firearms disabilities from
20 which relief is sought; (ii) the petitioner's mental health and
21 criminal history records, if any; (iii) the petitioner's
22 reputation, developed at a minimum through character witness
23 statements, testimony, or other character evidence; and (iv)
24 changes in the petitioner's condition or circumstances since
25 the disqualifying events relevant to the relief sought. If
26 relief is granted under this subsection or by order of a court

1 under this Section, the Director shall as soon as practicable
2 but in no case later than 15 business days, update, correct,
3 modify, or remove the person's record in any database that the
4 Department of State Police makes available to the National
5 Instant Criminal Background Check System and notify the United
6 States Attorney General that the basis for the record being
7 made available no longer applies. The Department of State
8 Police shall adopt rules for the administration of this
9 Section.

10 (Source: P.A. 97-1131, eff. 1-1-13; 97-1150, eff. 1-25-13;
11 97-1167, eff. 6-1-13; 98-63, eff. 7-9-13; revised 12-10-14.)