



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4450

Introduced 2/3/2020, 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.

LRB101 17186 RLC 66588 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 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 violation
21 of Article 24 of the Criminal Code of 1961 or the Criminal Code
22 of 2012, or any adjudication as a delinquent minor for the
23 commission of an offense that if committed by an adult would be

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

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

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

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

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

1 established by the applicant to the court's or Director's
2 satisfaction that:

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

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

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

18 (3) granting relief would not be contrary to the public
19 interest; and

20 (4) granting relief would not be contrary to federal
21 law.

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

1 threatening to the officer, another person, or the public as
2 determined by the treating clinical psychologist or physician,
3 and as a result of his or her work is referred by the employer
4 for or voluntarily seeks mental health evaluation or treatment
5 by a licensed clinical psychologist, psychiatrist, or
6 qualified examiner, and:

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

13 (B) the officer has not left the mental institution
14 against medical advice.

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

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

25 (B) all documentation regarding the admission,
26 evaluation, treatment and discharge from the treating

1 licensed clinical psychologist or psychiatrist of the
2 officer;

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

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

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

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

21 (c-10) (1) An applicant, who is denied, revoked, or has his
22 or her Firearm Owner's Identification Card seized under
23 subsection (e) of Section 8 of this Act based upon a
24 determination of a developmental disability or an intellectual
25 disability may apply to the Director of State Police requesting
26 relief.

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

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

17 (A) granting relief would not be contrary to the public
18 interest; and

19 (B) granting relief would not be contrary to federal
20 law.

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

24 (5) The changes made to this Section by this amendatory Act
25 of the 99th General Assembly apply to requests for relief
26 pending on or before the effective date of this amendatory Act,

1 except that the 60-day period for the Director to act on
2 requests pending before the effective date shall begin on the
3 effective date of this amendatory Act.

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

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

18 (f) Any person who is subject to the disabilities of 18
19 U.S.C. 922(d)(4) and 922(g)(4) of the federal Gun Control Act
20 of 1968 because of an adjudication or commitment that occurred
21 under the laws of this State or who was determined to be
22 subject to the provisions of subsections (e), (f), or (g) of
23 Section 8 of this Act may apply to the Department of State
24 Police requesting relief from that prohibition. The Director
25 shall grant the relief if it is established by a preponderance
26 of the evidence that the person will not be likely to act in a

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

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