

# SB3395



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3395

Introduced 2/7/2012, by Sen. John J. Millner

#### SYNOPSIS AS INTRODUCED:

430 ILCS 65/10  
430 ILCS 65/11

from Ch. 38, par. 83-10  
from Ch. 38, par. 83-11

Amends the Firearm Owners Identification Card Act. Requires the Department of State Police to adopt rules concerning applications for relief that it grants from particular prohibitions on the possession of firearms under the federal Gun Control Act of 1968. Provides that decisions of the Director of State Police to deny a person's application for relief from those prohibitions are exempt from the Administrative Review Law and subject to de novo review by a circuit court and that any party may, during that review, offer evidence that is otherwise proper and admissible without regard to whether that evidence is part of the administrative record. Also makes technical changes. Effective immediately.

LRB097 17858 RLC 63080 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Sections 10 and 11 as follows:

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

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

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 ~~the Department of~~ State Police for a hearing upon  
15 such denial, revocation or seizure, unless the denial,  
16 revocation, or seizure was based upon a forcible felony,  
17 stalking, aggravated stalking, domestic battery, any violation  
18 of the Illinois Controlled Substances Act, the Methamphetamine  
19 Control and Community Protection Act, or the Cannabis Control  
20 Act that is classified as a Class 2 or greater felony, any  
21 felony violation of Article 24 of the Criminal Code of 1961, or  
22 any adjudication as a delinquent minor for the commission of an  
23 offense that if committed by an adult would be a felony, in

1 which case the aggrieved party may petition the circuit court  
2 in writing in the county of his or her residence for a hearing  
3 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.

12 (c) Any person prohibited from possessing a firearm under  
13 Sections 24-1.1 or 24-3.1 of the Criminal Code of 1961 or  
14 acquiring a Firearm Owner's Identification Card under Section 8  
15 of this Act may apply to the Director of ~~the Department of~~  
16 State Police or petition the circuit court in the county where  
17 the petitioner resides, whichever is applicable in accordance  
18 with subsection (a) of this Section, requesting relief from  
19 such prohibition and the Director or court may grant such  
20 relief if it is established by the applicant to the court's or  
21 Director's satisfaction that:

22 (0.05) when in the circuit court, the State's Attorney  
23 has been served with a written copy of the petition at  
24 least 30 days before any such hearing in the circuit court  
25 and at the hearing the State's Attorney was afforded an  
26 opportunity to present evidence and object to the petition;

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

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

11          (3) granting relief would not be contrary to the public  
12          interest.

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

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

1 (f) Any person who is prohibited from possessing a firearm  
2 under 18 U.S.C. 922(d)(4) and 922(g)(4) of the federal Gun  
3 Control Act of 1968 may apply to the Department of State Police  
4 requesting relief from such prohibition and the Director shall  
5 grant such relief if it is established to the Director's  
6 satisfaction that the person will not be likely to act in a  
7 manner dangerous to public safety and granting relief would not  
8 be contrary to the public interest. The Department of State  
9 Police shall adopt rules for the administration of this  
10 subsection (f).

11 (Source: P.A. 96-1368, eff. 7-28-10.)

12 (430 ILCS 65/11) (from Ch. 38, par. 83-11)

13 Sec. 11. Judicial review of final administrative  
14 decisions.

15 (a) All final administrative decisions of the Department  
16 under this Act, except final administrative decisions of the  
17 Director of State Police to deny a person's application for  
18 relief under subsection (f) of Section 10 of this Act, shall be  
19 subject to judicial review under the provisions of the  
20 Administrative Review Law, and all amendments and  
21 modifications thereof, and the rules adopted pursuant thereto.  
22 The term "administrative decision" is defined as in Section  
23 3-101 of the Code of Civil Procedure.

24 (b) Any final administrative decision by the Director of  
25 State Police to deny a person's application for relief under

1 subsection (f) of Section 10 of this Act is subject to de novo  
2 judicial review by the circuit court, and any party may offer  
3 evidence that is otherwise proper and admissible without regard  
4 to whether that evidence is part of the administrative record.

5 (c) The Director of State Police shall submit a report to  
6 the General Assembly on March 1 of each year, beginning March  
7 1, 1991, listing all final decisions by a court of this State  
8 upholding, reversing, or reversing in part any administrative  
9 decision made by the Department of State Police.

10 (Source: P.A. 86-882.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.