

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1085

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-30-2-151.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 151.9. IC 35-47-8.5-4 (Concerning law enforcement certification for approval of the transfer or manufacture of certain firearms).**

SECTION 2. IC 35-31.5-2-35.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 35.5. "Certification", for purposes of IC 35-47-8.5, has the meaning set forth in IC 35-47-8.5-1.**

SECTION 3. IC 35-31.5-2-37.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 37.7. "Chief law enforcement officer", for purposes of IC 35-47-8.5, has the meaning set forth in IC 35-47-8.5-1.**

SECTION 4. IC 35-31.5-2-51.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 51.5. "Completed request", for purposes of IC 35-47-8.5, has the meaning set forth in IC 35-47-8.5-1.**

SECTION 5. IC 35-31.5-2-210.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 210.5. "NFA firearm", for purposes of IC 35-47-8.5, has the meaning set forth in IC 35-47-8.5-1.**

SECTION 6. IC 35-31.5-2-210.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 210.7. "NICS", for purposes of IC 35-36-2-4, IC 35-36-2-5, IC 35-36-3-1, IC 35-47-2-7, IC 35-47-2.5, and IC 35-47-8.5, has the meaning set forth in IC 35-47-2.5-2.5.**

SECTION 7. IC 35-47-8.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 8.5. NFA Firearm Certification

Sec. 1. The following definitions apply throughout this chapter:

- (1) **"Certification"** means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of an application to transfer or manufacture an NFA firearm.
- (2) **"Chief law enforcement officer"** means any official whom the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, or its successor agency, identifies by regulation or otherwise as eligible to provide a required certification for the transfer or manufacture of an NFA firearm. The term includes a designee of the official.
- (3) **"Completed request"** means:
 - (A) a written request for certification under this chapter; and
 - (B) submission of the required information described in section 3(a) of this chapter.
- (4) **"NFA firearm"** means a firearm as defined in 26 U.S.C. 5845(a) (the National Firearms Act).
- (5) **"NICS"** (National Instant Criminal Background Check System) has the meaning set forth in IC 35-47-2.5-2.5.

Sec. 2. (a) If the certification of a chief law enforcement officer is required by federal law for the transfer or manufacture of an NFA firearm, the chief law enforcement officer shall issue the certification not later than fifteen (15) days after receipt of a completed request for certification, unless the applicant is:

- (1) prohibited by law from receiving or possessing a firearm; or
- (2) the subject of a proceeding that could result in the



applicant being prohibited by law from receiving or possessing a firearm.

(b) A chief law enforcement officer may deny a request for certification only:

- (1) because the request for certification is not complete; or
- (2) for a reason described in subsection (a)(1) or (a)(2).

A chief law enforcement officer may not deny a request for certification based on a generalized objection to private persons or entities manufacturing, transferring, or receiving a firearm or an NFA firearm if the possession of the firearm or NFA firearm is not otherwise prohibited by law.

(c) If the chief law enforcement officer denies a request for certification under this section, the chief law enforcement officer shall provide the applicant with a written notification of the denial and the reason for the denial. If the chief law enforcement officer denies a request for certification because the request is not complete, the chief law enforcement officer shall set forth, in detail, why the request is not complete. An applicant whose request for certification is denied because it is not complete may reapply or amend the existing request by supplying the required information.

Sec. 3. (a) In considering a request for certification, a chief law enforcement officer may require an applicant to submit only the following information:

- (1) Information required by federal or state law to identify the applicant and conduct a background check, including a check of the NICS.
- (2) Information necessary to determine the disposition of an arrest or proceeding relevant to the applicant's eligibility to lawfully possess or receive a firearm.

(b) A chief law enforcement officer may not require access to private property or consent to inspect any private premises as a condition of issuing a certification under this chapter.

Sec. 4. (a) Except for the award of court costs, attorney's fees, and other expenses as described in section 5 of this chapter, and except as provided in subsection (b), a chief law enforcement officer is immune from civil liability based on an act or omission relating to the issuance or denial of a certification under this chapter.

(b) The immunity described in subsection (a) does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct.

Sec. 5. (a) A person whose request for certification has been



denied under this chapter may file an action in the circuit or superior court of the county in which the denial occurred to compel the chief law enforcement officer to issue a certification. The person filing an action under this subsection shall serve a copy of the action on the chief law enforcement officer in accordance with the Indiana Rules of Trial Procedure.

(b) The court shall determine the matter under subsection (a) de novo, with the burden of proof on the chief law enforcement officer to sustain the denial of the request for certification. If the request for certification was denied because the applicant is:

- (1) prohibited by law from receiving or possessing a firearm;
- or
- (2) the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing a firearm;

a certified copy of documentary evidence establishing that the applicant is ineligible for certification is sufficient to meet the burden of proof. However, an affidavit or conclusory statement is not sufficient to sustain the burden of proof that a denial of the request for certification was proper.

(c) In an action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing applicant if the court finds that there was no substantial basis for the denial of the request for certification.

(d) A court shall expedite the hearing of an action filed under this section.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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