

# HOUSE BILL No. 1085

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-30-2-151.9; IC 35-31.5-2; IC 35-47-8.5.

**Synopsis:** Firearms and certification. Defines "chief law enforcement officer" as an official whose certification is required under federal law for a person to manufacture or transfer certain firearms, and requires a chief law enforcement officer to issue a requested certification unless the person requesting the certification is: (1) prohibited by law from receiving or possessing a firearm; or (2) the subject of a proceeding that could result in the person being prohibited by law from receiving or possessing a firearm. Requires a chief law enforcement officer who denies a request for certification to explain the reasons for the denial in writing. Permits a person whose certification is denied the right to challenge the denial by filing an action in a circuit or superior court, specifies that the chief law enforcement officer bears the burden of proving that the denial was lawful, and permits the award of reasonable attorney's fees and other costs to the person if there was no substantial basis for the denial. Provides civil immunity to a chief law enforcement officer for acts or omissions made in good faith.

**Effective:** July 1, 2016.

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## Eberhart, VanNatter

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January 5, 2016, read first time and referred to Committee on Public Policy.

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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 BILL No. 1085

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

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

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

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

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

16 SECTION 4. IC 35-31.5-2-51.5 IS ADDED TO THE INDIANA  
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2016]: **Sec. 51.5. "Completed request"**, for  
 2 purposes of IC 35-47-8.5, has the meaning set forth in  
 3 IC 35-47-8.5-1.

4 SECTION 5. IC 35-31.5-2-210.5 IS ADDED TO THE INDIANA  
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2016]: **Sec. 210.5. "NFA firearm"**, for  
 7 purposes of IC 35-47-8.5, has the meaning set forth in  
 8 IC 35-47-8.5-1.

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

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

18 **Chapter 8.5. NFA Firearm Certification**

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

20 (1) "Certification" means the participation and assent of the  
 21 chief law enforcement officer necessary under federal law for  
 22 the approval of an application to transfer or manufacture an  
 23 NFA firearm.

24 (2) "Chief law enforcement officer" means any official whom  
 25 the federal Bureau of Alcohol, Tobacco, Firearms, and  
 26 Explosives, or its successor agency, identifies by regulation or  
 27 otherwise as eligible to provide a required certification for the  
 28 transfer or manufacture of an NFA firearm. The term  
 29 includes a designee of the official.

30 (3) "Completed request" means:

31 (A) a written request for certification under this chapter;  
 32 and

33 (B) submission of the required information described in  
 34 section 3(a) of this chapter.

35 (4) "NFA firearm" means a firearm as defined in 26 U.S.C.  
 36 5845(a) (the National Firearms Act).

37 (5) "NICS" (National Instant Criminal Background Check  
 38 System) has the meaning set forth in IC 35-47-2.5-2.5.

39 **Sec. 2. (a) If the certification of a chief law enforcement officer**  
 40 **is required by federal law for the transfer or manufacture of an**  
 41 **NFA firearm, the chief law enforcement officer shall issue the**  
 42 **certification not later than fifteen (15) days after receipt of a**



1 completed request for certification, unless the applicant is:

2 (1) prohibited by law from receiving or possessing a firearm;  
3 or

4 (2) the subject of a proceeding that could result in the  
5 applicant being prohibited by law from receiving or  
6 possessing a firearm.

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

9 (1) because the request for certification is not complete; or

10 (2) for a reason described in subsection (a)(1) or (a)(2).

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

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

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

28 (1) Information required by federal or state law to identify the  
29 applicant and conduct a background check, including a check  
30 of the NICS.

31 (2) Information necessary to determine the disposition of an  
32 arrest or proceeding relevant to the applicant's eligibility to  
33 lawfully possess or receive a firearm.

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

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



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

4           **Sec. 5. (a) A person whose request for certification has been**  
5 **denied under this chapter may file an action in the circuit or**  
6 **superior court of the county in which the denial occurred to compel**  
7 **the chief law enforcement officer to issue a certification. The**  
8 **person filing an action under this subsection shall serve a copy of**  
9 **the action on the chief law enforcement officer in accordance with**  
10 **the Indiana Rules of Trial Procedure.**

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

15               **(1) prohibited by law from receiving or possessing a firearm;**  
16               **or**

17               **(2) the subject of a proceeding that could result in the**  
18 **applicant being prohibited by law from receiving or**  
19 **possessing a firearm;**

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

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

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

