

FIRST REGULAR SESSION

# HOUSE BILL NO. 341

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RIDDLE (Sponsor), FRANZ,  
FUNDERBURK AND COX (Co-sponsors).

1051L.04I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 475.375, RSMo, and to enact in lieu thereof one new section relating to petitions to remove firearms disqualification.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 475.375, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 571.092, to read as follows:

- 571.092. 1. Any individual over the age of eighteen years who has been adjudged incapacitated under chapter 475, who has been involuntarily committed under chapter 632, or who is otherwise subject to the firearms-related disabilities of 18 U.S.C. Section 922(d)(4) or (g)(4) as a result of an adjudication or commitment that occurred in this state may file a petition for the removal of the disqualification to ship, transport, receive, purchase, possess, or transfer a firearm imposed under 18 U.S.C. Section 922(d)(4) or (g)(4) and the laws of this state.**
- 2. The petition shall be filed in the circuit court with jurisdiction in the petitioner's place of residence or that entered the letters of guardianship or the most recent order for involuntary commitment, or the most recent disqualifying order, whichever is later. The petition shall include:**
- (1) The circumstances regarding the firearms disabilities;**
  - (2) The applicant's record which at a minimum shall include the applicant's mental health and criminal history records, if any;**
  - (3) The applicant's reputation through character witness statements, testimony, or other character evidence; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           **(4) Any other information or evidence relevant to the relief sought, including but**  
18 **not limited to evidence concerning any changes in the petitioner's condition since the**  
19 **disqualifying commitment or adjudication occurred.**

20

21 **Upon receipt of the petition, the clerk shall schedule a hearing and provide notice of the**  
22 **hearing to the petitioner.**

23           **3. The court shall grant the requested relief if it finds by a preponderance of**  
24 **evidence that:**

25           **(1) The petitioner will not be likely to act in a manner dangerous to public safety;**  
26 **and**

27           **(2) Granting the relief is not contrary to the public interest.**

28           **4. In order to determine whether to grant relief under this section, the court may**  
29 **request the local prosecuting attorney, circuit attorney, or attorney general to provide a**  
30 **written recommendation as to whether relief should be granted. In any order requiring**  
31 **such review the court may grant access to any and all mental health records, juvenile**  
32 **records, and criminal history of the petitioner wherever maintained. The court may allow**  
33 **presentation of evidence at the hearing if requested by the petitioner or by the local**  
34 **prosecuting attorney, circuit attorney, or attorney general. A record shall be kept of the**  
35 **proceedings.**

36           **5. If the petitioner is filing the petition as a result of an involuntary commitment**  
37 **under chapter 632, the hearing and records shall be closed to the public, unless the court**  
38 **finds that public interest would be better served by conducting the hearing in public. If**  
39 **the court determines the hearing should be open to the public, upon motion by the**  
40 **petitioner, the court may allow for the in-camera inspection of mental health records. The**  
41 **court may allow the use of the record but shall restrict it from public disclosure, unless it**  
42 **finds that the public interest would be better served by making the record public.**

43           **6. The court shall include in its order the specific findings of fact on which it bases**  
44 **its decision.**

45           **7. Upon a judicial determination to grant a petition under this section, the clerk in**  
46 **the county where the petition was granted shall forward the order to the Missouri state**  
47 **highway patrol for updating of the petitioner's record with the National Instant Criminal**  
48 **Background Check System (NICS). The Missouri state highway patrol shall contact the**  
49 **Federal Bureau of Investigation to effect this updating no later than twenty-one days from**  
50 **receipt of the order.**

51           **8. Any person who has been denied a petition for the removal of the disqualification**  
52 **to ship, transport, receive, purchase, possess, or transfer a firearm under this section shall**

53 **not be eligible to file another petition for removal of such disqualification until the**  
54 **expiration of one year from the date of such denial.**

55 **9. In the event a petition is denied under this section, the petitioner may appeal**  
56 **such denial, and review shall be de novo.**

57 [475.375. 1. Any individual over the age of eighteen years who has been  
58 adjudged incapacitated under this chapter or who has been involuntarily  
59 committed under chapter 632 may file a petition for the removal of the  
60 disqualification to purchase, possess, or transfer a firearm when:

61 (1) The individual no longer suffers from the condition that resulted in  
62 the individual's incapacity or involuntary commitment;

63 (2) The individual no longer poses a danger to self or others for purposes  
64 of the purchase, possession, or transfer of firearms under 18 U.S.C. Section 922;  
65 and

66 (3) Granting relief under this section is not contrary to the public interest.  
67 No individual who has been found guilty by reason of mental disease or defect  
68 may petition a court for restoration under this section.

69 2. The petition shall be filed in the circuit court that entered the letters of  
70 guardianship or the most recent order for involuntary commitment, whichever is  
71 later. Upon receipt of the petition, the clerk shall schedule a hearing and provide  
72 notice of the hearing to the petitioner.

73 3. The burden is on the petitioner to establish by clear and convincing  
74 evidence that:

75 (1) The petitioner no longer suffers from the condition that resulted in the  
76 incapacity or the involuntary commitment;

77 (2) The individual no longer poses a danger to self or others for purposes  
78 of the purchase, possession, or transfer of firearms under 18 U.S.C. Section 922;  
79 and

80 (3) Granting relief under this section is not contrary to the public interest.

81 4. Upon the filing of the petition the court shall review the petition and  
82 determine if the petition is based upon frivolous grounds and if so may deny the  
83 petition without a hearing. In order to determine whether petitioner has met the  
84 burden pursuant to this section, the court may request the local prosecuting  
85 attorney, circuit attorney, or attorney general to provide a written  
86 recommendation as to whether relief should be granted. In any order requiring  
87 such review the court may grant access to any and all mental health records,  
88 juvenile records, and criminal history of the petitioner wherever maintained. The  
89 court may allow presentation of evidence at the hearing if requested by the local  
90 prosecuting attorney, circuit attorney, or attorney general.

91 5. If the petitioner is filing the petition as a result of an involuntary  
92 commitment under chapter 632, the hearing and records shall be closed to the  
93 public, unless the court finds that public interest would be better served by  
94 conducting the hearing in public. If the court determines the hearing should be  
95 open to the public, upon motion by the petitioner, the court may allow for the

96 in-camera inspection of mental health records. The court may allow the use of  
 97 the record but shall restrict from public disclosure, unless it finds that the public  
 98 interest would be better served by making the record public.

99 6. The court shall enter an order that:

100 (1) The petitioner does or does not continue to suffer from the condition  
 101 that resulted in commitment;

102 (2) The individual does or does not continue to pose a danger to self or  
 103 others for purposes of the purchase, possession, or transfer of firearms under 18  
 104 U.S.C. Section 922; and

105 (3) Granting relief under this section is not contrary to the public interest.  
 106 The court shall include in its order the specific findings of fact on which it bases  
 107 its decision.

108 7. Upon a judicial determination to grant a petition under this section, the  
 109 clerk in the county where the petition was granted shall forward the order to the  
 110 Missouri state highway patrol for updating of the petitioner's record with the  
 111 National Instant Criminal Background Check System (NICS).

112 8. (1) Any person who has been denied a petition for the removal of the  
 113 disqualification to purchase, possess, or transfer a firearm pursuant to this section  
 114 shall not be eligible to file another petition for removal of the disqualification to  
 115 purchase, possess, or transfer a firearm until the expiration of one year from the  
 116 date of such denial.

117 (2) If a person has previously filed a petition for the removal of the  
 118 disqualification to purchase, possess, or transfer a firearm and the court  
 119 determined that:

120 (a) The petitioner's petition was frivolous; or

121 (b) The petitioner's condition had not so changed such that the person  
 122 continued to suffer from the condition that resulted in the individual's incapacity  
 123 or involuntary commitment and continued to pose a danger to self or others for  
 124 purposes of the purchase, possession, or transfer of firearms under 18 U.S.C.  
 125 Section 922; or

126 (3) Granting relief under this section would be contrary to the public  
 127 interest, then the court shall deny the subsequent petition unless the petition  
 128 contains the additional facts upon which the court could find the condition of the  
 129 petitioner had so changed that a hearing was warranted.]