

Governor/Attorney General Entraps Law-Abiding Citizens with Legal Guidance on Recent Court Ruling on Illinois' Gun Ban

Timeline:

January 10, 2023: Illinois law took effect that banned the sale and purchase of certain firearms deemed “assault weapons.” However, as long as the financial transaction took place and an individual passed the background check, that individual could still pick up the gun after the 72-hour waiting period, even if that date occurred after Jan. 10, 2023.

April 28, 2023: The United States District Court for the Southern District of Illinois granted a statewide injunction against Illinois' assault weapons ban. The order prohibited the state of Illinois from enforcing the law while the case is being litigated. This opened a period of time where it was again lawful to sell and purchase these “banned firearms.” Note: The Governor’s Administration and Attorney General were silent on legal guidance following this ruling.

May 4, 2023: The United States Court of Appeals for the Seventh Circuit lifted the injunction of the Southern District’s order, again making it illegal for the sale and purchase of these “banned firearms.”

May 6, 2023: The Attorney General, through the Governor’s Administration (both defendants of the lawsuit) issued a statement providing legal guidance to Illinois citizens.

“If the purchase of a firearm or firearm attachment banned under PICA was initiated but not completed between the date of the Southern District of Illinois’ Order on April 28, 2023, until the stay of such Order by the U.S. Appellate Court on May 4, 2023, the delivery of such weapon would be unlawful pursuant to 720 ILCS5/24-1.9(b).

If the purchase of a firearm or firearm attachment banned under PICA was initiated and completed between the date of the Southern District of Illinois’ Order on April 28, 2023, until the stay of such Order by the U.S. Appellate Court on May 4, 2023, the possession of such weapon will be unlawful beginning January 1, 2024, pursuant to 720 ILCS5/24-1.9(c).

Persons who possess a banned firearm or firearm attachment are required to endorse an affidavit by January 1, 2024, stating that any banned firearm or firearm attachments were possessed prior to the enactment of PICA (January 10, 2023) pursuant to 720 ILCS5/24-1.9(d).”

Understanding the AG Guidance:

1. An individual who **legally** completed the purchase and background check and obtained a “banned firearm” within the time period between the Southern District’s order and the 7th Circuit Court’s order (April 28-May 4), must surrender that firearm by January 1, 2024, or would be in unlawful possession of the firearm beginning January 1, 2024—a penalty that ranges from a Class A Misdemeanor to a Class 3 Felony. *Note: January 1, 2024, is the date provided in statute for individuals to sign an affidavit to claim a firearm that is allowed to be grandfathered-in under the law.*

2. An individual who legally completed the purchase, including passing the background check, of a “banned firearm” prior to the 7th Circuit Court’s ruling on May 4 but was not able to obtain possession of the firearm prior to May 4 because of the state’s 72-hour waiting period law, is legally not allowed to pick up and obtain that purchased firearm. Additionally, if the individual did in fact pick up and obtain the purchased firearm after the May 4 court reversal, that person is presently in unlawful possession of the firearm— a penalty that ranges from a Class A Misdemeanor to a Class 3 Felony. *Note: this is contrary to what was legally allowed when the law was originally enacted on Jan. 10, 2023.*

Hypotheticals:

1. Jane legally purchases a certain hunting rifle on April 29, 2023. She passes the background check, purchases the firearm, and picks up the rifle on May 2, following the 72-hour waiting period. Jane currently is in legal possession of that firearm because she obtained the firearm before the May 4 court ruling; however, beginning January 1, 2024, Jane either must surrender that firearm to the State Police, or would in unlawful possession of a banned firearm and could face legally penalties.
2. Gloria legally purchases a certain hunting rifle on May 2, 2023. She passes the background check, purchases the firearm, and picks up the shotgun on May 5, 2023, following the 72-hour waiting period required by Illinois law. Despite the fact that Jane has passed the background check, purchased the firearm, and completed the 72-hour waiting period, she is currently in unlawful possession of that firearm because she picked up the firearm unknowingly after the 7th Circuit Court’s ruling on May 4. Gloria could face a Class A Misdemeanor and the gun shop could face a Class 3 Felony. *Note: Gloria would have had no notification of the Attorney General’s legal guidance as that was not provided until May 6—after Jane unknowingly and unlawfully picked up her purchased shotgun.*

Outstanding Concern:

Illinois’ “assault weapons” ban law provides citizens with the ability to lawfully transfer a “banned firearm” that was lawfully in possession prior to January 10, 2023, to an heir, an individual residing in another state maintaining it in another state, or a dealer licensed as a federal firearms dealer. However, no guidance was given on whether this applies to the firearms that were recently legally purchased after January 10, 2023.