



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

*Firearms and Explosives
Industry Division
Enforcement Programs and Services*

October 2, 2023

Mr. Rick Stallings
Operations Director
Division of Arkansas Crime Information
Arkansas Department of Public Safety
322 South Main Street - Suite 615
Little Rock, Arkansas 72201

Dear Mr. Stallings:

This letter is to inform you that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has public safety concerns regarding the administration of Arkansas' Concealed Handgun Carry License ("CHCL"). The CHCL is currently recognized as an alternative to completing a background check through the National Instant Criminal Background Check System ("NICS"). ATF is concerned that the issuance of CHCLs to individuals who are prohibited by Federal law from possession of firearms creates an unacceptable risk of placing firearms in the hands of prohibited persons. In particular, Arkansas state law may provide federally prohibited medical marijuana users the ability to obtain a CHCL issued by the Director of the Division of Arkansas State Police. The CHCL can then be used to acquire a firearm from a Federal Firearms licensee ("FFL") despite the federal prohibition and without an additional background check being conducted at the point of sale.

The permanent provisions of the Brady Act took effect on November 30, 1998, and generally require FFLs to initiate a NICS check before transferring a firearm to an unlicensed person. However, the Brady Act contains exemptions to the NICS check requirement, including an exception for holders of certain state permits to possess, carry, or acquire firearms. The law and implementing regulations provide that permits issued within the past 5 years may be used as alternatives to the NICS check if certain other requirements are satisfied. Most importantly, the authority issuing the permit must deny a permit to anyone prohibited from possessing firearms under federal, state, or local law. *See* 18 U.S.C. § 922(t)(3); 27 CFR § 478.102. In 1999, ATF evaluated the CHCL permit issued in Arkansas and determined "concealed weapons permits issued on or after April 1, 1999, qualify," as reflected on the ATF Permanent Brady Permit

Chart.¹

Arkansas has previously been advised on the federal denial criteria concerning controlled substances. In March 2023, the Federal Bureau of Investigations (FBI) Criminal Justice Information Services (CJIS) Division conducted an audit of Arkansas' NICS alternate permit process. The audit resulted in no findings requiring corrective action. On April 29, 2023, a letter was mailed to you indicating these results. The letter included supplemental audit documents and a policy reference guide. As noted in the policy reference guide, federal denial criteria include "controlled substance user" which is defined as "an unlawful user of or addicted to any controlled substance (as defined in §109 of the Controlled Substances Act (21 U.S.C. § 802));" 18 U.S.C. § 922(g)(3).

Additionally, ATF has provided information to the public on the use of medical marijuana. In 2011, ATF sent an Open Letter to all FFLs advising them that, regardless of whether his or her state has passed legislation authorizing marijuana use for medicinal purposes, marijuana is a Schedule 1 controlled substance, and therefore, a person who uses or is addicted to marijuana is an unlawful user of or addicted to a controlled substance and is prohibited by Federal law from possessing firearms and ammunition.

On April 12, 2023, Arkansas House Bill 1784, "An Act to Amend the Law Concerning Concealed Handguns to Protect the Rights of Medical Marijuana Patients and Caregivers to Obtain a License to Carry a Concealed Handgun and for Other Purposes," was signed into law. The enactment of House Bill 1784 amended Ark. Code Ann. § 5-73-309, concerning the requirements for obtaining a concealed carry license, to read that a license shall be issued if, among other things, the applicant is not prohibited from receiving, possessing, or transporting a firearm by any Federal, state, or local law, but provided that "[t]he director shall not consider a person's status as a qualifying patient or designated caregiver under the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98, § 2, in determining whether an applicant is eligible to be issued a license to carry a concealed handgun under this subchapter;" Ark. Code Ann. § 5-73-309(b). In addition to prohibiting the Director of the Division of Arkansas State Police from considering a person's status as a qualifying patient or caregiver, the act further prohibits the Department of Health from disclosing the "identity of a person who has been issued a registry identification card to the Division of Arkansas State Police for the purpose of facilitating a criminal history record check or any other background check related to the issuance of a license to carry a concealed handgun under § 5-73-301;" Ark. Code Ann. § 20-56-308(b).

Based on the potential implications of House Bill 1784, ATF respectfully requests written clarification of Arkansas law and policy for the following issues within 30 days of your receipt of this letter:

- 1) How does Arkansas ensure all current CHCL holders and applicants are not "controlled substance users," including users of medicinal marijuana?
- 2) Ark. Code Ann. § 20-56-308(b) restricts the Director of the Division of Arkansas State Police from considering a person's status as a medical marijuana patient in determining

¹See <https://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart>.

eligibility for a CHCL. How does Arkansas reconcile this provision of state law with the federal prohibition on firearms possession by individuals who are unlawful users of or addicted to any Title 21 controlled substance which includes marijuana?

If Arkansas law does not require authorized State officials to confirm that an individual is not a “controlled substance user,” then federally prohibited marijuana users may obtain firearms using the CHCL. If ATF does not receive a response to the above issues, ATF will reevaluate the Arkansas CHCL as an alternative permit. As a result of that process, ATF may determine an Arkansas CHCL no longer qualifies as an alternate to the NICS check requirement.

We appreciate your prompt attention to this important public safety matter. Your assistance is crucial in ensuring the potentially dangerous individuals are not acquiring firearms. If you need any further assistance or guidance, please do not hesitate to contact me at 303-263-8539.

Sincerely yours,



Marianna Mitchem
Chief, Firearms and Explosives Industry Division
Office of Enforcement Programs and Services