

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1057**

**Bill Subtitle: TO AMEND THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016; AND TO ADD CRIMINAL BACKGROUND CHECK PROCEDURES.**

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### Basic Change :

#### **Sponsor: Representative House**

This bill would amend the Arkansas Medical Marijuana Amendment of 2016 (“Amendment”) to provide authorization for the Arkansas Department of Health (“ADH”), the Arkansas Medical Marijuana Commission (“Commission”), and the Alcoholic Beverage Control Division (“ABC”) to require each applicant for a new or reinstated license to apply for or authorize the department, commission, and division to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police (“ASP”) and the Federal Bureau of Investigation (“FBI”). The criminal background checks would conform to the applicable federal standards and would include the taking of fingerprints. The applicant would be responsible for the payment of any fee associated with the criminal background check.

ASP would provide to the ADH, the Commission, or ABC information obtained from the background check concerning the commission by the applicant of any offense falling under the definition of “excluded felony offense” as defined in the Amendment. An applicant convicted of a felony meeting the definition of excluded felony offense in any state or federal court would not be allowed to receive or hold a license without a waiver by ADH, the Commission, or ABC. Circumstances for which a waiver may be granted would include:

- The age at which the crime was committed;
- The circumstances surrounding the crime;
- The length of time since the crime;
- Subsequent work history;
- Employment references;
- Character references;
- A conviction or record that has been expunged; and
- Other evidence demonstrating that the applicant does not pose a threat to the public health, safety, or welfare.

### Revenue Impact :

None

### Taxpayer Impact :

The proposal could require any applicant seeking a license issued by the Commission, ADH, or ABC to undergo a state and national criminal background check to determine eligibility for licensure.

### Resources Required :

None.

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### **Time Required :**

Adequate time is provided for implementation

### **Procedural Changes :**

None.

### **Other Comments :**

None.

### **Legal Analysis :**

The bill creates a potentially subjective application of the Amendment's standards. The bill carves out special waivers for excluded felony offenses. Under the bill, the waivers can be requested by the applying entity to the licensing agency. Factors that would allow for a possible waiver are located on Page 3, Lines 4 through 12, but includes subjective components such as the "circumstances" of the conviction of the excluded felony and "other factors" to be determined by the licensing agency. The inclusion of waivers may lead to the necessity and use of an appeals process towards those who believe the waiver has been unfairly applied. This modification could eventually expose the Department of Finance and Administration, through its ABC division, to potential litigation if any individual with an excluded felony offense is denied a license.