

TO: COL. BILL BRYANT, *ASP Director*
FROM: MARY CLAIRE MCLAURIN, *ASP Staff Attorney*
DATE: June 4, 2019
RE: CHCL Applications Waivers & Acknowledgments

Issue

ASP has received some inquiries regarding the Waiver and Acknowledgment section of the Concealed Handgun Carry Licensing (“CHCL”) application and renewal application. Specifically, some licensees and potential applicants have questioned whether the waivers and acknowledgments are necessary to process a CHCL application or renewal application; some legislators have questioned whether the waivers and acknowledgments are properly authorized by law.

Short Answer

The waivers and acknowledgments contained in the current Arkansas CHCL application and renewal application are both required by law and necessary for the Department to process the application. Arkansas Code Annotated § 5-73-311(a)(4)(A) states that an applicant for a concealed carry license must submit “a waiver authorizing the department access to any medical, criminal, or other records concerning the applicant and permitting access to all of the applicant’s criminal records.” In order to determine whether an applicant meets the statutory requirements for issuance of a CHCL, the Department must have the ability to verify the information provided by the applicant on the application.

Facts & Analysis

The language in the Waiver and Acknowledgment section of the CHCL application has been described as “NEW,” but the current version was adopted on February 14, 2019. *See Exhibit “A” – Current CHCL Application*, attached. Prior applications have contained more or less the same waivers and acknowledgments, but the wording is continually updated to cover changes in the law and to correspond with state and federal regulations. *See Exhibit “B” – 2012, 2016, & 2018 CHCL Applications*, attached. Applicants were required to execute a similar waiver and acknowledgment dating back to the inception of the CHCL in Arkansas, in 1995. *See Exhibit “C” – Authority to Release Information*, attached.

There are many legal bases for the waivers and acknowledgments required of CHCL applicants. Arkansas law requires an applicant for a license to bear the burden of proving his or her eligibility for that license to the satisfaction of the licensing agency. *See Arkansas Health Planning and Development Agency v. Hot Springs County Memorial Hosp.*, 291 Ark. 186, 188, 723 S.W.2d 363, 365 (1987).

All applicants are required by law to submit truthful answers on CHCL applications. Arkansas Code Annotated § 5-73-305 provides for the imposition of criminal penalties (Class B misdemeanor) for submission of “knowingly” false answers. There is no evidence that any applicant has ever been prosecuted under this provision. Pursuant to Rule 1.6, the application will be denied or the license revoked if it is determined that an applicant “knowingly” submits a false answer or document with an application. Arkansas Code Annotated § 5-73-310(6) *requires* the Department to include warnings about these penalties on the application.

To determine whether an applicant is eligible for licensure, it is necessary for ASP to verify the information provided by the applicant on his or her application. **Arkansas Code**

Annotated § 5-73-311(a)(4)(A) requires the applicant to authorize Department access to “any medical, criminal, or other records concerning the applicant and permitting access to all of the applicant’s criminal records.” What follows is a listing of the statutory requirements for licensure, together with a non-exhaustive list of entities that may be required to provide further information to verify eligibility.

- **Ark. Code Ann. § 5-73-309(1), (2), (3)** – United States citizenship or legal residence, Arkansas residency, and age requirement
 - US Citizenship and Immigration Services (“USCIS”), Immigration Customs and Enforcement (“ICE”), Arkansas Department of Vital Statistics, Arkansas Department of Finance and Administration, and all branches of the United States Armed Forces
- **Ark. Code Ann. § 5-73-308, § 5-73-309(5), (6), (7), (8), and (12), and § 5-73-312** – requirements that the applicant or licensee be free from certain criminal convictions
 - State and Federal courts and city, county, state, and federal law enforcement agencies¹
- **Ark. Code Ann. § 5-73-309(4), (7), (8), and (11)** – requirements relating to mental and physical capability to safely handle a firearm, no prior threat or attempt of suicide, limitations on drug and alcohol treatment, and previous voluntary commitments for mental health treatment
 - Medical providers, mental health institutions and treatment facilities, drug and alcohol treatment facilities
- **Ark. Code Ann. § 5-73-309(6), (10), and (11)** – the applicant must not have been involuntarily committed, declared mentally defective, or adjudicated mentally incompetent
 - FBI National Instant Check System (“NICS”); State and Federal Courts, boards, commissions, or agencies; mental health institutions and treatment facilities
- **Ark. Code Ann. § 5-73-309(6)** – the applicant cannot be prohibited by federal law (18 U.S.C. § 922(g)) from possessing, receiving, or transporting a firearm
 - Federal courts and law enforcement agencies, Social Security Administration (“SSA”), all branches of the US Armed Forces, FBI, ICE, Arkansas Department of Health

¹ Quite often, the criminal history information contained in a background check is incomplete. It then becomes necessary for the CHCL section to follow-up with the sentencing court or arresting agency to ascertain the final disposition of a charge or arrest.

ASP and its employees are required by law to maintain the confidentiality of the medical, criminal, or other records received as a part of the application process. *See* Ark. Code Ann. § 5-73-311(a)(4)(C) and Ark. Code Ann. § 25-19-105(b)(19).

The waivers and acknowledgments are continuing in nature because a licensee must remain eligible to hold a CHCL throughout the licensure period, or the Department is *required* to revoke the license. *See* Ark. Code Ann. § 5-73-312(a)(1).

Conclusion

In summary, the waivers and acknowledgments on the CHCL application and renewal application are required by law, but are also necessary for ASP to verify the eligibility of an applicant. Apparently, some licensees and/or applicants have become fearful that the information ASP is authorized to receive may be used to improperly deny a CHCL or CHCL renewal. ASP remains bound by the statutory requirements for issuance of a CHCL and is required to support its CHCL determinations by “substantial evidence.” *See Wright v. Arkansas State Plant Bd.*, 311 Ark. 125, 130, 842 S.W.2d 42, 45 (1992). An applicant or licensee has the right to appeal any such decision to the Department under the Administrative Procedures Act (Ark. Code Ann. § 25-15-201 to -219). If the applicant or licensee believes that the Director’s final decision is incorrect, he or she may submit a petition for judicial review to circuit court pursuant to Ark. Code Ann. § 25-15-212.