



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Enforcement Programs and Services

Washington, DC 20226

www.atf.gov

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**PUBLIC SAFETY ADVISORY TO ALL MICHIGAN FEDERAL FIREARMS
LICENSEES**

The purpose of this public safety advisory is to advise you of an important change to the procedure you must follow to comply with the Brady Handgun Violence Prevention Act (Brady law), 18 U.S.C. § 922(t), when transferring a firearm to an unlicensed person.

The Brady law generally requires FFLs to initiate a National Instant Criminal Background Check System (NICS) check before transferring a firearm to an unlicensed person. Nonetheless, pursuant to 18 U.S.C. § 922(t)(3), the Brady law contains exceptions to the NICS check, 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 qualify as alternatives to the NICS check if certain other requirements are satisfied. This includes a requirement that a government official verifies that the possession of the firearm would not be in violation of law.

On March 24, 2006, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) published an Open Letter to all Michigan Federal firearm licensees (FFLs) finding that a Michigan State Concealed Pistol License (CPL) issued on or after November 22, 2005, could be used as an alternative to initiating a NICS background check prior to transferring a firearm to an unlicensed person.

ATF based this determination on the requirements of 18 U.S.C. § 922(t) and the requirements set forth in State statute MCL 28.426(2). In relevant part, that State statute required that a CPL shall not be issued to an applicant unless the Michigan State Police “has determined through the federal national instant criminal background check system that the applicant is not prohibited under federal law from possessing or transporting a firearm [and] has verified through the United States Immigration and Customs Enforcement databases that the applicant is not an illegal alien or a nonimmigrant alien.”

In spite of this specific statutory requirement, ATF recently received information from the Federal Bureau of Investigation, Criminal Justice Information Services Division Audit Unit that Michigan CPLs have been, and continue to be issued to certain applicants without a determination by Michigan officials as to whether the applicant is prohibited under Federal law from possessing or transporting firearms. Specifically, ATF learned that CPLs were and

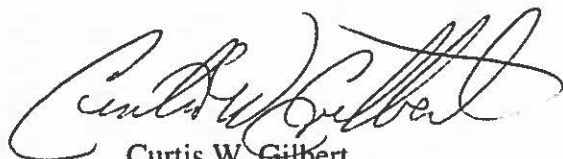
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(continued)

continue to be issued to applicants who were likely prohibited due to a conviction for a misdemeanor crime of domestic violence (18 U.S.C. § 922(g)(9)), and to habitual marijuana users (18 U.S.C. § 922(g)(3)). Although possession and use of marijuana is not unlawful under Michigan law, marijuana remains a "controlled substance" under Federal law, and those using marijuana are prohibited from possessing or transporting a firearm pursuant to 18 U.S.C. § 922(g)(3).

The ATF Open Letter issued to All Michigan Federal Firearms Licensees on March 24, 2006 is rescinded as of the date of this letter because, as explained above, a valid Michigan CPL is no longer a NICS alternative under 18 U.S.C. § 922(t).

All Michigan FFLs are required to conduct a NICS background check prior to the transfer of a firearm to a non-licensee, even if that individual possesses a valid, unexpired CPL.

If you have any questions about this Open Letter, please call ATF's Firearms Industry Programs Branch at (202) 648-7190.



Curtis W. Gilbert
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U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC 20226

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OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received a number of inquiries regarding the use of marijuana for medicinal purposes¹ and its applicability to Federal firearms laws. The purpose of this open letter is to provide guidance on the issue and to assist you, a Federal firearms licensee, in complying with Federal firearms laws and regulations.

A number of States have passed legislation allowing under State law the use or possession of marijuana for medicinal purposes, and some of these States issue a card authorizing the holder to use or possess marijuana under State law. During a firearms transaction, a potential transferee may advise you that he or she is a user of medical marijuana, or present a medical marijuana card as identification or proof of residency.

As you know, Federal law, 18 U.S.C. § 922(g)(3), prohibits any person who is an “unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))” from shipping, transporting, receiving or possessing firearms or ammunition. Marijuana is listed in the Controlled Substances Act as a Schedule I controlled substance, and there are no exceptions in Federal law for marijuana purportedly used for medicinal purposes, even if such use is sanctioned by State law. Further, Federal law, 18 U.S.C. § 922(d)(3), makes it unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or **having reasonable cause to believe** that such person is an unlawful user of or addicted to a controlled substance. As provided by 27 C.F.R. § 478.11, “an inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time.”

Therefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer “yes” to question 11.e. on ATF Form 4473 (August 2008), Firearms Transaction Record, and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have “reasonable cause to believe” that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered “no” to question 11.e. on ATF Form 4473.

ATF is committed to assisting you in complying with Federal firearms laws. If you have any questions, please contact ATF’s Firearms Industry Programs Branch at (202) 648-7190.

Arthur Herbert
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¹ The Federal government does not recognize marijuana as a medicine. The FDA has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks an accepted level of safety for use under medical supervision. See 66 Fed. Reg. 20052 (2001). This Open Letter will use the terms “medical use” or “for medical purposes” with the understanding that such use is not sanctioned by the federal agency charged with determining what substances are safe and effective as medicines.