

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1817

5 By: Representative C. Douglas
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE OFFENSE OF POSSESSION OF A
9 FIREARM WHILE UNDER THE INFLUENCE OF ALCOHOL OR A
10 CONTROLLED SUBSTANCE; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO CREATE THE OFFENSE OF POSSESSION OF A
14 FIREARM WHILE UNDER THE INFLUENCE OF
15 ALCOHOL OR A CONTROLLED SUBSTANCE.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 5, Chapter 73, Subchapter 1, is amended
22 to add an additional section to read as follows:

23 5-73-113. Possession of a firearm while under the influence of alcohol
24 or a controlled substance.

25 (a) A person commits the offense of possession of a firearm while
26 under the influence of alcohol or a controlled substance if the person
27 knowingly possesses a firearm while he or she is under the influence of
28 alcohol or a controlled substance to such a degree as to render the person
29 incapable of safely operating the firearm.

30 (b) Possession of a firearm while under the influence of alcohol or a
31 controlled substance is a Class A misdemeanor.

32 (c) It is a defense to prosecution under this section if the person
33 possesses a firearm while:

34 (1) In the person's own dwelling or place of business or on land
35 owned or possessed by the person; or

36 (2) Committing an act of defense that is legally justified, if



1 the possession does not last longer than is immediately necessary to complete
2 the act of defense.

3 (d)(1) If probable cause exists for a law enforcement officer to
4 believe a person is in possession of a firearm while under the influence of
5 alcohol or a controlled substance, the law enforcement officer shall request
6 that the person submit to one (1) or more tests of the person's blood,
7 breath, urine, or other bodily substance to determine the presence of alcohol
8 or a controlled substance.

9 (2) The selection of the test or tests shall be made by the law
10 enforcement officer.

11 (e)(1) If a law enforcement officer requests a person to submit to a
12 test of blood, breath, urine, or other bodily substance under this section,
13 the withdrawal of blood, breath, urine, or other bodily substance at the
14 direction of the law enforcement officer may be performed only by:

15 (A) A person licensed to practice medicine or licensed as
16 a physician's assistant, or a person acting under the direction of a person
17 licensed to practice medicine or licensed as a physician's assistant;

18 (B) A registered nurse or a licensed practical nurse;

19 (C) A qualified medical technician; or

20 (D) A phlebotomist.

21 (2) A sample of the person's blood, breath, urine, or other
22 bodily substance shall be drawn or taken in the same manner as under the
23 Omnibus DWI or BWI Act, § 5-65-101 et seq.

24 (3)(A) A person's refusal to permit a sample of his or her
25 blood, breath, urine, or other bodily substance to be taken under this
26 subsection is admissible in evidence against the person at any trial on a
27 charge arising out of the person's possession of a firearm while under the
28 influence of alcohol or a controlled substance.

29 (B) Failure of a person to provide an adequate sample of
30 blood, breath, urine, or other bodily substance as directed under this
31 subsection constitutes a refusal unless the person shows that the failure was
32 due to physical inability caused by a medical condition unrelated to any
33 ingested alcohol or controlled substance.

34 (C) In a prosecution for possession of a firearm while
35 under the influence of alcohol or a controlled substance, if the court finds
36 that a person refused to submit to testing when requested under this section,

1 upon petition to the court the prosecuting attorney may recover on behalf of
 2 the state, in addition to the criminal penalties provided in this section, a
 3 civil penalty not exceeding one thousand dollars (\$1,000) for each violation.

4 (4)(A) In a prosecution for possession of a firearm while under
 5 the influence of alcohol or a controlled substance, evidence of the
 6 concentration of alcohol or a controlled substance in the person's blood,
 7 breath, urine, or other bodily substance may be admitted and shall give rise
 8 to the following:

9 (i) If the alcohol concentration is less than eight
 10 hundredths (0.08), that fact may be considered with other evidence to
 11 determine if the person was under the influence of alcohol;

12 (ii) If the alcohol concentration is eight
 13 hundredths (0.08) or more, it is prima facie evidence that the person was
 14 under the influence of alcohol; and

15 (iii) If there is present in a bodily substance of
 16 the person a narcotic, hypnotic, somnifacient, stimulant, or other controlled
 17 substance which has the capacity to render the person incapacitated, that
 18 fact may be considered to determine if the person was under the influence of
 19 a controlled substance.

20 (B) Subdivision (e)(4)(A) of this section does not limit
 21 the introduction of any other evidence bearing upon the question of whether
 22 or not the person was under the influence of alcohol or a controlled
 23 substance.

24 (C) Upon the request of a person submitting to testing of
 25 his or her blood, breath, urine, or other bodily substance under this
 26 section, a report of the results of the testing shall be made available to
 27 the person.

28
 29 SECTION 2. Arkansas Code § 5-73-312(a)(1), concerning revocation of a
 30 concealed handgun license, is amended to read as follows:

31 (a)(1) A license to carry a concealed handgun issued under this
 32 subchapter shall be revoked if the licensee:

33 (A) ~~becomes~~ Becomes ineligible under the criteria set
 34 forth in § 5-73-308(a) or § 5-73-309+; or

35 (B)(i) Is convicted of possession of a firearm while under
 36 the influence of alcohol or a controlled substance, § 5-73-113.

1 (ii) A licensee who has his or her license revoked
2 under subdivision (a)(1)(B) of this section shall have his or her license
3 revoked for a minimum of one (1) year for a first offense and three (3) years
4 for a second or subsequent offense.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36