

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 1299

By: Representative Brown

## For An Act To Be Entitled

AN ACT CREATING THE OFFENSE OF POSSESSION OF A  
HANDGUN WHILE INTOXICATED; CONCERNING THE PLACES AND  
LOCATIONS A CONCEALED HANDGUN LICENSEE IS PROHIBITED  
FROM CARRYING A CONCEALED HANDGUN; AND FOR OTHER  
PURPOSES.

## Subtitle

CREATING THE OFFENSE OF POSSESSION OF A  
HANDGUN WHILE INTOXICATED; AND CONCERNING  
THE PLACES AND LOCATIONS A CONCEALED  
HANDGUN LICENSEE IS PROHIBITED FROM  
CARRYING A CONCEALED HANDGUN.

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

SECTION 1. Arkansas Code § 5-73-306 is amended to read as follows:  
5-73-306. Prohibited places.

~~No license to carry a concealed handgun issued pursuant to this subchapter authorizes any person~~ A license to carry a concealed handgun issued under this subchapter does not permit a licensee to carry a concealed handgun into:

(1) ~~Any~~ A police station, sheriff's station, or Department of Arkansas State Police station;

(2) ~~Any~~ An Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department facility;

(3)(A) ~~Any~~ A building of the Arkansas State Highway and Transportation Department or onto grounds adjacent to any building of the



Arkansas State Highway and Transportation Department.

(B) However, subdivision (3)(A) of this section does not apply to:

(i) A rest area or weigh station of the Arkansas State Highway and Transportation Department; or

(ii) A publicly owned and maintained parking lot that is a publicly accessible parking lot if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in the publicly owned and maintained parking lot;

(4) Any part of a detention facility, prison, or jail, including without limitation a parking lot owned, maintained, or otherwise controlled by the Department of Correction or Department of Community Correction;

(5) ~~Any~~ A courthouse, courthouse annex, or other building owned, leased, or regularly used by a county for conducting court proceedings or housing a county office unless:

(A) The licensee is either:

(i) Employed by the county; or

(ii) A countywide elected official;

(B) The licensee's principal place of employment is within the courthouse, the courthouse annex, or other building owned, leased, or regularly used by the county for conducting court proceedings or housing a county office; and

(C) The quorum court by ordinance approves a plan that allows licensees permitted under this subdivision (5) to carry a concealed handgun into the courthouse, the courthouse annex, or other building owned, leased, or regularly used by the county for conducting court proceedings or housing a county office as set out by the local security and emergency preparedness plan;

(6)(A) ~~Any~~ A courtroom.

(B) However, ~~nothing in this subchapter precludes this subchapter does not preclude~~ a judge from carrying a concealed weapon or determining who ~~will~~ may carry a concealed weapon into his or her courtroom;

(7) ~~Any~~ A meeting place of the governing body of ~~any~~ a governmental entity;

(8) Any meeting of the General Assembly or a committee of the

General Assembly;

~~(9) Any state office;~~

~~(10) Any athletic event not related to firearms;~~

~~(11) Any portion of an establishment, except a restaurant as defined in § 3-5-1202, licensed to dispense alcoholic beverages for consumption on the premises;~~

~~(12) Any portion of an establishment, except a restaurant as defined in § 3-5-1202, where beer or light wine is consumed on the premises;~~

~~(13)(A)(9)(A)~~ A school, college, community college, or university campus building or event.

(B) However, subdivision ~~(13)(A)(9)(A)~~ of this section does not apply to:

(i) A kindergarten through grade twelve (K-12) private school operated by a church or other place of worship that:

(a) Is located on the developed property of the kindergarten through grade twelve (K-12) private school;

(b) Allows the licensee to carry a concealed handgun into the church or other place of worship under this section; and

(c) Allows the licensee to possess a concealed handgun on the developed property of the kindergarten through grade twelve (K-12) private school under § 5-73-119(e);

(ii) A kindergarten through grade twelve (K-12) private school or a prekindergarten private school that through its governing board or director has set forth the rules and circumstances under which the licensee may carry a concealed handgun into a building or event of the kindergarten through grade twelve (K-12) private school or the prekindergarten private school;

(iii) Participation in an authorized firearms-related activity;

(iv) Carrying a concealed handgun as authorized under § 5-73-322; or

(v) A publicly owned and maintained parking lot of a school, college, community college, or university if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle;

~~(14) Inside the~~

(10) The passenger terminal of ~~any~~ an airport, except that ~~no~~ person a person is not prohibited from carrying any legal firearm into the passenger terminal if the firearm is encased for shipment for purposes of checking the firearm as baggage to be lawfully transported on any aircraft;

~~(15)(A) Any~~

(11)(A) A church or other place of worship.

(B) However, this subchapter does not preclude a church or other place of worship from determining who may carry a concealed handgun into the church or other place of worship;

~~(16) Any~~

(12) A place where the carrying of a firearm is prohibited by federal law;

~~(17)~~(13) Any place where a parade or demonstration requiring a permit is being held, and the licensee is a participant in the parade or demonstration; or

~~(18)(A)(i) Any~~

(14)(A)(i) A place at the discretion of the person or entity exercising control over the physical location of the place by placing at each entrance to the place a written notice clearly readable at a distance of not less than ten feet (10') that "carrying a handgun is prohibited".

(ii)(a) If the place does not have a roadway entrance, there shall be a written notice placed anywhere upon the premises of the place.

(b) In addition to the requirement of subdivision ~~(18)(A)(ii)(a)~~(14)(A)(ii)(a) of this section, there shall be at least one (1) written notice posted within every three (3) acres of a place with no roadway entrance.

(iii) A written notice as described in subdivision ~~(18)(A)(i)~~(14)(A)(i) of this section is not required for a private home.

(iv) ~~Any~~ A licensee entering a private home shall notify the occupant that the licensee is carrying a concealed handgun.

(B) Subdivision ~~(18)(A)~~(14)(A) of this section does not apply if the physical location is:

(i) A public university, public college, or community college, ~~as defined in § 5-73-322,~~ and the licensee is carrying a concealed handgun as provided under § 5-73-322; or

(ii) A publicly owned and maintained parking lot if the licensee is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle.

SECTION 2. Arkansas Code Title 5, Chapter 73, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Possession of a Handgun While Intoxicated

5-73-501. Definitions.

As used in this subchapter:

(1) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI; and

(2) "Date the conviction becomes final" means the latest of:

(A) The date of the person's conviction in district court, if the person has communicated to the district court that he or she waives an appeal of the conviction to the circuit court;

(B) The date after the person's available time to appeal a district court conviction to circuit court, as dictated by court rules;

(C) The date of the person's conviction in circuit court, if the person has communicated to the circuit court that he or she waives an appeal to an appellate court;

(D) The date after the person's available time to appeal a circuit court conviction to an appellate court, as dictated by court rules;

or

(E) The date the circuit court receives the mandate from an appellate court affirming the conviction, if the conviction is appealed to an appellate court;

(3) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination of alcohol, a controlled substance, or an intoxicant, to such a degree that the person's reactions, motor skills, and judgment are substantially altered and the person, therefore, constitutes a clear and substantial danger of physical injury or death to himself or herself or another person; and

(4) "Public place" does not include:

(A) A person's residence;

(B) Real property owned by the person or in which the person has a possessory interest.

5-73-502. Possession of a handgun while intoxicated.

(a) A person who knowingly possesses a handgun in a public place while intoxicated upon conviction is guilty of a Class C misdemeanor.

(b) It is an affirmative defense to a prosecution under this section that the handgun is stored in a condition that renders the handgun:

(1) Unloaded;

(2) Not immediately accessible; or

(3) Otherwise unable to be immediately employed as a weapon against another person.

(c) The consumption of alcohol or the possession of an open container of alcohol while in possession of a handgun does not in and of itself constitute probable cause that a person committed the offense of possession of a handgun while intoxicated.

5-73-503. Chemical analysis permitted.

(a) A chemical analysis of a person's blood, breath, saliva, or urine designed to show whether a person was intoxicated at the time he or she possessed a handgun may be made by a method approved by the State Board of Health.

(b) An instrument performing the chemical analysis shall have been certified at least one (1) time in the last three (3) months preceding arrest, and the operator of the instrument shall have been properly trained and certified.

5-73-504. Presumptions.

(a) If a chemical analysis of a person's blood, breath, saliva, or urine is conducted as authorized by § 5-73-503, it is presumed at the trial of a person who is charged with a violation of § 5-73-502 that the person was not intoxicated if the alcohol concentration of the person's blood, breath, saliva, or urine is four hundredths (0.04) or less by weight as shown by chemical analysis at the time of or within four (4) hours after the alleged offense.

(b) A presumption does not exist if at the time of the alleged offense

the person has an alcohol concentration of more than four hundredths (0.04) by weight of alcohol in the defendant's blood, breath, saliva, or urine, although this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

5-73-505. Breath analysis.

(a)(1) An instrument used to determine the alcohol content of the breath for the purpose of determining if the person possessed a handgun while intoxicated shall be constructed so that the analysis:

(A) Is made automatically when a sample of the person's breath is placed in the instrument; and

(B) Does not require adjustment or other action by the person administering the analysis.

(2) The instrument shall display digitally the alcohol content on the instrument itself as well as on an automatic printout.

(b) A breath analysis made by or through the use of an instrument that does not conform to the requirements of this section is inadmissible in a criminal or civil proceeding.

(c)(1) The State Board of Health may adopt appropriate rules to carry out the intent of this section.

(2) Only instruments approved by the board as meeting the requirements of this section and its own rules shall be used for making the breath analysis for determining alcohol concentration.

(3)(A) The Department of Health may limit by its rules the types or models of testing devices that may be approved for use under this section.

(B) The approved types or models shall be specified by manufacturer's name and model.

(d) A law enforcement agency that conducts alcohol testing shall comply with this section.

(e) An alcohol testing device that is used by a law enforcement agency for investigations of § 5-10-105, § 5-65-103, or § 5-65-303 that has already been approved for use under § 5-65-207 may be used for the same purposes under this subchapter.

5-73-506. Evidence.

(a) Except as provided in subsection (c) of this section, a record or

report of a certification, rule, evidence analysis, or other document pertaining to work performed by the Office of Alcohol Testing of the Department of Health under the authority of this subchapter shall be received as competent evidence as to the matters contained in the record or report in a court of this state, subject to the applicable rules of criminal procedure when attested to by the Director of the Office of Alcohol Testing of the Department of Health or his or her assistant, in the form of an original signature or by certification of a copy.

(b)(1) If a chemical analysis of a person's blood, breath, saliva, or urine is conducted, a person charged with violating § 5-73-502 has the right to cross-examine or call as a witness:

(A) The person who calibrates the instrument conducting a chemical analysis of the person's bodily substances;

(B) The operator of the instrument conducting a chemical analysis of the person's bodily substances; or

(C) A representative of the office.

(2)(A) The prosecuting attorney or the defendant may compel the testimony of a person listed in subdivision (b)(1) of this section by a subpoena issued to that person at least ten (10) days before the date of the hearing or trial.

(B) The person whose testimony is compelled shall have with him or her the record or report at issue, and the record or report is admissible at the hearing or trial.

(c) The admissibility of a chemical analysis that determines the presence in a person's blood, breath, saliva, or urine of a controlled substance or other intoxicant that is not alcohol is governed by § 12-12-313 when that chemical analysis is performed by the State Crime Laboratory and when the chemical analysis is being used in a criminal prosecution under § 5-73-502.